

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 1. BOARD OF ACCOUNTANCY

[R06-454]

#### PREAMBLE

- 1. Section Affected**

R4-1-341	Amend
R4-1-341.01	Repeal
R4-1-342	Amend
R4-1-343	Amend
R4-1-346	Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific)**

Authorizing statutes: A.R.S. § 32-703(B)(13)  
Implementing statutes: A.R.S. §§ 32-721, 32-724, 32-726
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 4617, December 15, 2006 (*in this issue*).
- 4. The name and address of agency personnel with whom persons may communicate regarding the rules:**

Name:	Valerie M. Elliott, Executive Director
Address:	Arizona State Board of Accountancy 100 N. 15th Ave., Ste. 165 Phoenix, AZ 85007
Telephone:	(602) 364-0804
Fax:	(602) 364-0903
E-mail:	velliott@azaccountancy.gov
- 5. An explanation of the rules, including the agency's reasons for initiating the rule:**

Clarify language and definitions, remove reference to non-Arizona examinee and allow registrants other means to notify the Board of a change of address.
- 6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The summary of the economic, small business, and consumer impact:**

The proposed rules will impact the Board, applicants for certification as certified public accountants and certified public accountants. The proposed rules' impact on the Board will be the usual rulemaking-related costs which are

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minimal. The Board estimates the proposed rules will have minimal on applicants for certification as certified public accountants and certified public accountants.

The Board, applicants for certification as certified public accountants and certified public accountants benefit from rules that are clear, concise and understandable. The proposed rules benefit applicants for certification as certified public accountants by specifying items for application packet which may reduce the amount of time it takes applicants to submit packets. In addition, applicants benefit from the definition of "upper level courses" a term used in statute in regards to the education requirement for certification. This definition will allow applicants to select appropriate courses in order to meet the education requirement for certification. Certified public accountants benefit by being able to use other means to notify the Board of an address change. The Board benefits from the proposed rules by providing clear, concise and understandable rules resulting in less inquiries regarding the application packet for certification and question regarding upper level courses.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Valerie M. Elliott, Executive Director  
Address: Arizona State Board of Accountancy  
100 N. 15th Ave., Ste. 165  
Phoenix, AZ 85007  
Telephone: (602) 364-0804  
Fax: (602) 364-0903  
E-mail: velliott@azaccountancy.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:**

Comments may be written or presented orally. Written comments must be received by 5:00 p.m., June 20, 2006. An oral proceeding is scheduled for:

Date: Tuesday, January 16, 2007  
Time: 8:30 a.m.  
Location: Arizona State Board of Accountancy  
100 N. 15th Ave., Ste. 165  
Phoenix, AZ 85007  
Nature: Oral Proceeding

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**12. Incorporations by reference and their location in the rules:**

Not applicable

**13. The full text of the rule follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 1. BOARD OF ACCOUNTANCY**

**ARTICLE 3. CERTIFICATION AND REGISTRATION**

Section

R4-1-341. CPA Certificates; by Examination

**ARTICLE 3. CERTIFICATION AND REGISTRATION**

**R4-1-341. CPA Certificates; by Examination**

**A. Application:** Upon passing all parts of the examination prescribed by A.R.S. §§ 32-723(C) ~~at one sitting or~~ as prescribed by R4-1-229, a candidate believing himself or herself to be otherwise qualified under A.R.S. §§ 32-721, may apply for a certificate of certified public accountant. ~~The candidate shall complete an application packet as prescribed by the Board. The application packet shall include the following information: applicant's background, personal data and photograph; examination scores; education and work history; university or college transcripts to confirm that the bachelor's degree and~~

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requirements have been completed; employer or employers name, address, and telephone number; authorization for investigation; and affirmation of truthfulness: by submitting the following to the Board:

1. A completed application packet;
2. An application fee in the amount of \$100.00;
3. Proof of passing an examination in Professional Ethics, as prescribed by the Board, within the two years immediately preceding submission of the application.

**B.** ~~Application fee:~~ The application fee for a certificate by examination is \$100.00. Application Packet: An application packet shall include, but not be limited to, the following information:

1. A completed application form signed by the applicant and notarized;
2. Applicant's background, personal data and photograph;
3. Scores from the examination prescribed by A.R.S. § 32-721(A)(2);
4. Education and work history;
5. University or college transcripts verifying the educational requirements of A.R.S. § 32-721;
6. Employment verification, including proof of compliance with the experience requirements of A.R.S. § 32-721;
7. References and Letters of Recommendations;
8. Authorization for investigation;
9. Affirmation of truthfulness;
10. Such other information required by the Board to determine compliance with the eligibility requirements of A.R.S. § 32-721.

**C.** ~~Examination:~~ Each applicant for a certificate of certified public accountant shall pass an examination in Professional Ethics as prescribed by the Board.

**D.** ~~An applicant for certification shall submit an application package containing the following items to the Board Office:~~

1. ~~A completed application form signed by the applicant and notarized;~~
2. ~~Other information required by the Board as set forth in subsection (A) necessary to determine the applicant's eligibility; and~~
3. ~~The application fee.~~

**E.** ~~C.~~ Within 30 days of receiving an application package, the Board shall notify the applicant that the package is either complete or incomplete. ~~If the applicant submits the items set forth in subsection (D) during the month the Board establishes the last day to file applications for examination or the subsequent month, the Board shall have an additional 60 days to notify the applicant that the package is either complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.~~

1. No change
2. No change
3. The Board shall not process an application for certification until the applicant has fully complied with the requirements of subsection ~~(D)~~ (A).
4. No change
5. No change
6. The 150-day time-frame for a substantive review for the issuance of a certificate is suspended from the date of the written request for additional information pursuant to subsection ~~(E)~~ (C)(5) until the date that all information is received. Service of any written notice shall be completed in accordance with R4-1-117(F)(1), (2), and (3). Pursuant to R4-1-455.03(F), the applicant has 30 days to respond to the Board's request for additional information. If the applicant fails to timely respond to the Board's request, the Board shall finish its substantive review based upon the information the applicant has presented.
7. No change

**F.** ~~D.~~ No change

1. No change
2. No change
3. No change

**G.** ~~E.~~ No change

1. No change
2. No change
3. No change

**R4-1-341.01. CPA Certificates; by Non-Arizona Examinee Repealed**

**A.** ~~Application:~~ An applicant for certification who sat for the CPA examination, as prescribed by A.R.S. §§ 32-723(C), outside of Arizona, passed all parts of the CPA examination at one sitting or as prescribed by R4-1-229, and who believes himself or herself to be otherwise qualified under A.R.S. §§ 32-721 shall comply with the application requirements as set forth in R4-1-341.

**B.** ~~Application fee:~~ The application fee for a certificate by a non-Arizona examinee is \$100.00.

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- ~~C.~~ Examination: Each applicant for a certificate of certified public accountant shall pass an examination in Professional Ethics as prescribed by the Board.
- ~~D.~~ The provisions set forth in R4-1-341(A), (D), (E), (F), and (G) apply to non-Arizona examinees.

**R4-1-342. CPA Certificates; by Reciprocity**

- A. Application: A person applying for a certificate as a certified public accountant in Arizona on the basis of a certificate in good standing issued by another state, pursuant to A.R.S. §§ 32-727 § 32-724, shall ~~comply with the application requirements set forth in R4-1-341.~~ submit the following to the Board:
  - 1. A completed application packet;
  - 2. An application fee in the amount of \$100.00.
- B. Application fee ~~Packet~~: ~~The application fee for a certificate by reciprocity is \$100.~~ An application packet shall include, but not be limited to, the following information:
  - 1. A completed application form signed by the applicant and notarized;
  - 2. Verification of passing the examination prescribed by A.R.S. § 32-721(A)(2);
  - 3. Documentation of the qualifications required by A.R.S. § 32-726;
  - 4. License verification from each jurisdiction in which the applicant has ever been issued a certificate as a certified public accountant;
  - 5. Authorization for investigation;
  - 6. Affirmation of truthfulness;
  - 7. Such other information required by the Board to determine compliance with the eligibility requirements of A.R.S. § 32-724.
- ~~C.~~ Examination: Each applicant for a certificate of certified public accountant shall pass an examination in Professional Ethics as prescribed by the Board. The provisions set forth in R4-1-341(C), (D), and (E) apply to applicants seeking certification by reciprocity.
- ~~D.~~ The provisions set forth in R4-1-341 (D), (E), (F), and (G) and the application packet requirements set forth in R4-1-341(A) apply to applicants seeking certification by reciprocity.

**R4-1-343. Education and Accounting Experience**

- A. Definitions. For the purpose of ~~this Section only~~ demonstrating the education and experience requirements of A.R.S. § 32-721, the following definitions apply:
  - 1. No change
  - 2. No change
  - 3. ~~“Examination”~~ “Examining” means the critical inquiry ~~or scrutiny~~ and analysis of financial or accounting information, which may include balance sheets, income statements, cash flow statements, and tax returns.
  - 4. ~~“Reporting” means to communicate examination results~~ express an opinion on the results of an examination of financial statements, by oral or written communication, to an employer, clients or other 3<sup>rd</sup> third parties.
  - 5. ~~“Upper level courses” mean courses taken beyond the basic level, that require a prerequisite of introductory accounting courses but does not include principles of accounting or introductory accounting courses.~~
- ~~B.~~ Graduate courses. ~~For a course to qualify as a graduate level accounting course that meets the experience requirement of A.R.S. §§ 32-721(2):~~
  - 1. ~~The course shall be designated by the educational institution at which credit has been earned as a course that is normally open only to graduate students, and~~
  - 2. ~~The content of the course shall require a prerequisite and mastery of the subject matter normally required for completion of an undergraduate degree.~~
- ~~B.C.~~ Certificate of experience. ~~The~~ To demonstrate compliance with the experience requirements of A.R.S. § 32-721, an applicant for certification shall submit a completed application package which includes 1 or more certificates of experience to confirm the accounting experience required by A.R.S. §§ 32-721(2), completed by an individual who possesses personal knowledge of the applicant’s work and sufficient accounting education and experience to be able to evaluate the applicant’s work, and such other information as the Board may require for explanation or clarification of experience.

**R4-1-346. Notice of Change of Address**

- A. Each registrant shall give notice to the Board, ~~within 30 days, of~~ Within 30 days of any business, mailing, or residential change of address ~~by filing a revised Biennial Registration Form.~~ a registrant shall notify the Board of the new address in a written letter signed by the registrant.
- B. Each registrant shall give notice to the Board Within 30 days of the opening of any new or additional office, or the closing of any existing office. ~~Notice shall be given to the Board by filing a revised Biennial Registration Form.~~ a registrant shall notify the Board in a written letter signed by the registrant.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 1. BOARD OF ACCOUNTANCY

[R06-451]

PREAMBLE

1. **Section Affected**  
R4-1-456
1. **Rulemaking Action**  
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific)**  
Authorizing statutes: A.R.S. § 32-703(B)(13)  
Implementing statutes: A.R.S. §§ 32-703(B)(3) and (13)
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 12 A.A.R. 4617, December 15, 2006 (*in this issue*).
4. **The name and address of agency personnel with whom persons may communicate regarding the rules:**  
Name: Valerie M. Elliott, Executive Director  
Address: Arizona State Board of Accountancy  
100 N. 15th Ave., Ste. 165  
Phoenix, AZ 85007  
Telephone: (602) 364-0804  
Fax: (602) 364-0903  
E-mail: velliott@azaccountancy.gov
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
Self-disclosure to include actions imposed by the Public Company Accounting Oversight Board and the American Institute of Certified Public Accountants and receipt of modified or adverse peer review report.
6. **A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
Not applicable
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
8. **The summary of the economic, small business, and consumer impact:**  
The proposed rules will impact the Board, certified public accountants, registered accounting firms and the public. The proposed rules' impact on the Board will be the usual rulemaking-related costs which are minimal. The Board estimates the proposed rules will have a minimal economic impact on certified public accountants and registered accounting firms. Certified public accountants and registered accounting firms will need to self report within 30 days any disciplinary action by the other state boards of accountancy, Securities and Exchange Commission, Internal Revenue Service, Public Company Accounting Oversight Board, any other state or federal agency or the American Institute of Certified Public Accountants. In addition, registered accounting firms would be required to self report within 30 days receipts of a final adverse peer review or Public Company firm inspection report containing criticism of or identifying potential defects in the quality control system or receipt of a second peer review report that is adverse or modified. The costs for certified public accountants and registered firms would be for collection and copying of the required information. These costs are estimated to be minimal.  
  
The public, Board, certified public accountants and registered firms benefit from rules that are clear, concise and understand. The proposed rules benefit the public and the Board by providing information regarding certified public accountants and registered firms work product or conduct to the Board in a timely matter.
9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**  
Name: Valerie M. Elliott, Executive Director

Notices of Proposed Rulemaking

Address: Arizona State Board of Accountancy  
100 N. 15th Ave., Ste. 165  
Phoenix, AZ 85007

Telephone: (602) 364-0804

Fax: (602) 364-0903

E-mail: velliot@azaccountancy.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:**

Comments may be written or presented orally. Written comments must be received by 5:00 p.m., June 20, 2006. An oral proceeding is scheduled for:

Date: Tuesday, January 16, 2007

Time: 9:00 a.m.

Location: Arizona State Board of Accountancy  
100 N. 15th Ave., Ste. 165  
Phoenix, AZ 85007

Nature: Oral Proceeding

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**12. Incorporations by reference and their location in the rules:**

Not applicable

**13. The full text of the rule follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 1. BOARD OF ACCOUNTANCY**

**ARTICLE 4. REGULATION**

Section

R4-1-456. Reporting Practice Suspensions and Violations

**ARTICLE 4. REGULATION**

**R4-1-456. Reporting Practice Suspensions and Violations**

A. All registrants, individuals and firms shall report to the Board:

1. ~~Any Imposition of any discipline, including, but not limited to suspension or, revocation, relinquishment, surrender, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, practice restriction, denial of application for or modification of a license, certificate, permit of practice rights by other state boards of accountancy, the federal Securities and Exchange Commission (SEC), the Internal Revenue Service (IRS), the Public Company Accounting Oversight Board (PCAOB), or any other state or federal agency.~~
2. Any ~~final~~ judgment in a civil action or administrative proceeding where the court or public agency makes findings of violations, by the registrant, of any fraud provisions of the laws of this state or of federal securities laws.
3. Any ~~final~~ judgment in a civil action where the court makes findings of accounting violations, dishonesty, fraud, misrepresentation or breach of fiduciary duty by the registrant.
4. Any ~~final~~ judgment in a civil action involving negligence in the practice of public accounting by the registrant.
5. No change
6. Receipt of a final adverse peer review report or a PCAOB firm inspection report containing criticism of or identifying potential defects in the quality control systems.
7. Receipt of a second consecutive peer review report that is adverse or modified, including a report review report that contains significant comments.
8. Disciplinary action by the American Institute of Certified Public Accountants.

B. The report required under this rule must be in the form of a written letter and received by the Board within 30 days of the entry of any ~~judgment or suspension or revocation of the registrant's right to practice before any agency of the matters~~

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described in subsection (A). Such letter shall contain a description of the registrant's activities which resulted in a suspension or revocation of the disciplinary action, final judgment or conviction; the name of the state or federal agency which has restricted the registrant's right to practice; the effective date and length of any practice restriction; the case file number of any court action, civil or criminal; and the name and location of the court rendering a final judgment or conviction; and the entry date of any final judgment or conviction, and shall be accompanied by a copy of the final judgment or the order, stipulation of consent document that evidences the disciplinary action.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 19. BOARD OF NURSING**

[R06-457]

**PREAMBLE**

**1. Sections Affected**

R4-19-215  
R4-19-301  
R4-19-302  
R4-19-505  
R4-19-506  
R4-19-507  
R4-19-508

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend

**2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statutes: A.R.S. §§ 32-1606(A)(1), (A)(6), (B)(1), (B)(2), (B)(3), (B)(5), and (B)(8), 32-1634, 32-1634.01, 32-1635.01, 32-1639, and 32-1644.

Implementing statutes: A.R.S. §§ 32-1601(2), (5) and (15), 32-1632, 32-1637, 32-1664(G), (H), and (P).

**3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 690, March 3, 2006

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Pamela K. Randolph RN, MS  
Nurse Practice Consultant/Education  
Address: 4747 N. 7th St., Ste. 200  
Phoenix, AZ 85014  
Telephone: (602) 889-5209  
Fax: (602) 889-5155  
E-mail: prandolph@azbn.gov

**5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:**

The Arizona State Board of Nursing (Board) is initiating changes in several rules to address issues that have arisen since their adoption. Amendments are intended to clarify procedures for implementing the Board's statutory authority regarding out-of-state nursing programs, extend the waiver of national certification for the clinical nurse specialist (CNS) specialty areas of maternal/infant and women's health, require an advanced practice certificate holder to practice 960 hours within the specialty to keep certification active, stipulate that nurse practitioners only provide those health care services for which they are educationally prepared, and clarify the current language including citations within these rules.

**R4-29-215. Distance Learning Nursing Programs; Out-of-State Nursing Programs**

This rule is being amended to include the process to rescind the approval of an out-of-state nursing program. The same due process rights that are in place for in-state programs are clearly delineated in this Section.

**R4-19-301. Licensure by Exam**

This rule contains amendments related to the passing standards for English language proficiency exams that are required for graduates of nursing programs located in non-English speaking countries. The passing score on the Internet-based Test of English as a Foreign Language (TOEFL) has been extended to include the score on a newer version,

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the Internet-based TOEFL. The scores were derived from an equivalency table provided by Educational Testing Service/Chauncey equating the scores on the current versions of the TOEFL to the new Internet-based TOEFL. The standards for the International English Language Test Service (IELTS) Examination are not being revised. The Board carefully examined studies conducted by the National Council of State Boards of Nursing. A standard-setting panel recommended a slightly lower minimum score for IELTS and a significantly higher minimum score for TOEFL than the current rules require. The Board chose not to adopt those recommendations based on review of a sample of applicants who would not have met the revised standard, the absence of data linking the revised standard to safety to practice nursing, and community concern that this would pose an additional barrier to foreign applicants. The Board will continue to examine the area of English language proficiency cut scores. A subsection was added establishing the time-frame for withholding licensure to graduates of a program whose approval was rescinded

**R4-19-302. Licensure by Endorsement**

The Board is amending these rules to clarify the process that the Board will utilize in determining what additional licensure requirements an endorsement applicant must fulfill if they graduated from a nursing program if program approval was rescinded.

**R4-19-505. Requirements for Advanced Practice Registered Nursing Certification**

In addition to technical and grammatical changes to this Section, a subsection was added allowing for extension of the waiver of national certification for Clinical Nurse Specialists in maternal/infant health and women's health. The rationale for this extension is that a certifying exam does not exist for this nationally recognized specialty of clinical nurse specialist practice. If an appropriate examination is developed the waiver would automatically expire. Additional changes were made clarifying that applicants from other states would have to maintain current nurse practitioner certification or at a minimum only allow the certificate to expire six months before applying to the Board to be eligible to be "grandfathered" for certification without evidence of a graduate degree in nursing. This amendment is intended to allow for some nurses, who in anticipation of moving to Arizona, allow their original nurse practitioner certification to expire for a brief period. This grace period only applies to the graduate degree requirement, not national certification or completion of an appropriate program.

**R4-19-506. Expiration of Advanced Practice Certificates; Practice Requirement; Renewal**

Requirements to practice as an advanced practice nurse in order to retain an advanced practice certificate were added to this Section. Technical and grammatical changes were also made.

**R4-19-507. Temporary Advanced Practice Certificate**

Technical and grammatical changes were made to this Section.

**R4-19-508. Scope of Practice of Registered Nurse Practitioner**

Amendments were added to this Section to clarify the educational and practice requirements for a registered nurse practitioner to provide services within the scope of practice.

**6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Board reviewed two studies in preparing this rulemaking. The Board reviewed "International English Language Testing System Standard-Setting Study" (2005) by Plake, Buckendahl, and Eckhout and chose not to adopt the recommendations of the study to revise the passing standard for the International English Language Test System (IELTS) exam of English proficiency. The Board also reviewed "Recommending a Minimum English Proficiency Standard for Entry-Level Nursing" (2005) by O'Neill, Tannenbaum, and Tiffen and chose not to adopt the recommendations of this study to raise the passing standard on the Test of English as a Foreign Language (TOEFL) exam. These decisions are based on the need for bilingual nurses in Arizona, the lack of evidence to demonstrate that the current standard is too low for Arizona, and the fact that the current standard is the standard for a Visa Screen Certificate for immigration purposes. Each study, all data underlying each study and an analysis of each study may be obtained by contacting the person listed in Section 4 or the Executive Director of the Board of Nursing.

**7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The Arizona State Board of Nursing licenses approximately 60,000 registered nurses and 11,000 practical nurses and certifies approximately 20,000 nursing assistants. Additionally the Board oversees 29 in-state nursing programs and approximately 150 nursing assistant programs. The Board has granted approval for three out-of-state nursing programs to conduct clinical classes in Arizona. The Board also regulates advanced practice registered nursing (APRN) in the categories of registered nurse practitioner (a.k.a. nurse practitioner) including nurse midwife and clinical nurse specialist. Currently the Board certifies approximately 3,000 nurse practitioners and 138 clinical nurse specialists.



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Out-of-state nursing programs will benefit from having their due-process rights specified in this rulemaking. There will be a direct economic impact on any program from out-of state that does not meet Board standards. The program may incur expenses implementing measures to remedy deficiencies in their program. If the program chooses not to comply with Board rules, depending on the size of the program and the number of Arizona residents who enroll, the program may experience a significant to very significant loss of revenue. However, this economic impact is not any greater than that currently in place for in-state institutions. The potential costs are outweighed by the benefit to the public of ensuring that programs attended by Arizona applicants conform to Board standards.

Advanced practice nurses who do not meet the practice requirement may lose the ability to hold themselves out to be advanced practice nurses and may incur an expense or loss of income while completing a preceptorship and coursework. This expense is outweighed by the benefit to the public of ensuring that persons certified by the Board are current in practice.

The Board may incur additional personnel expenses related to any enforcement action taken against an out-of-state program. The Education Consultant, Executive Director, and Assistant Attorney General for the Board will be required to expend time and effort to issue the required notices, monitor any program that is deficient, and communicate the action to the public. Also, if a program requests a hearing, Board staff will incur the expenses associated with preparing for a hearing. The Board staff will also be expending time and resources explaining the AP practice requirement to the regulated community. These expenses are directly related to the mission of the Board to protect the public.

Applicants will benefit from the provision allowing the Board to specify the remediation if they attended a nursing program whose approval has been rescinded. Current rules would require the Board to withhold licensure. Applicants from a revoked program seeking initial licensure may incur expenses related to the cost of any remedial education the Board prescribes and experience a delay in licensure with subsequent loss of potential income as a nurse. These expenses are less than those that the applicant would bear if they had to complete their whole program.

Other provisions are expected to have a direct economic benefit to licensees. Clinical nurse specialists in the areas of maternal/infant and women's health will benefit from having the waiver of national certification extended until an examination is developed.

The public is expected to benefit in a number of ways. Ensuring that all licensees in Arizona graduate from a nursing program that meets minimum Board standards will provide for enhanced public protection and safety. Extending the certification waiver for clinical nurse specialists in maternal/infant and women's health will provide consumers with access to these specialized providers of care. Ensuring that providers of advanced practice nursing services have current experience in the role will protect the public from receiving care from nurses who are not current in practice.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Pamela K. Randolph RN, MS  
Nurse Practice Consultant/Education  
Address: 4747 N. 7th St., Ste. 200  
Phoenix, AZ 85014  
Telephone: (602) 889-5209  
Fax: (602) 889-5155  
E-mail: prandolph@azbn.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

The Board will hold an oral proceeding on January 17, 2007 at 9:00 a.m. in the Board offices at 4747 N. 7th St., Ste. 200, Phoenix, AZ 85014. The Board will accept written comments submitted to Joey Ridenour, RN, MN, Executive Director, 4747 N. 7th St., Ste. 200, Phoenix, AZ 85014 until the close of record at 5:00 p.m., January 17, 2007.

**11. Any other matters prescribed by statute that are applicable to the specific agency or any specific rule or class of rules:**

Not applicable

**12. Any material incorporated by reference and its location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 19. BOARD OF NURSING**

**ARTICLE 2. ~~ARIZONA~~ PROFESSIONAL AND PRACTICAL NURSING PROGRAMS;  
REFRESHER PROGRAMS**

Section

R4-19-215. Distance Learning Nursing Programs; Out-of-State Nursing Programs

**ARTICLE 3. LICENSURE**

Section

R4-19-301. Licensure by Examination

R4-19-302. Licensure by Endorsement

**ARTICLE 5. ADVANCED AND EXTENDED NURSING PRACTICE**

Section

R4-19-505. Requirements for Advanced Practice Registered Nursing Certification

R4-19-506. Expiration of Advanced Practice Certificates; Practice Requirement; Renewal

R4-19-507. Temporary Advanced Practice Certificate

R4-19-508. Scope of Practice of a Registered Nurse Practitioner

**ARTICLE 2. ~~ARIZONA~~ PROFESSIONAL AND PRACTICAL NURSING PROGRAMS;  
REFRESHER PROGRAMS**

**R4-19-215. Distance Learning Nursing Programs; Out-of-State Nursing Programs**

- A.** An out-of-state nursing program that plans to provide both didactic and clinical instruction in Arizona shall comply with the application requirements of R4-19-207 and R4-19-208.
- B.** A nursing program that delivers didactic instruction by distance learning methods shall ensure that the methods of instruction are compatible with the program curriculum plan and enable a student to meet the goals, competencies, and objectives of the educational program and standards of the Board.
  1. A distance learning nursing program shall establish a means for assessing individual student outcomes, and program outcomes including, at minimum, student learning outcomes, student retention, student satisfaction, and faculty satisfaction.
  2. For out-of-state nursing programs, the program shall be within the jurisdiction of and regulated by an equivalent nursing regulatory authority in the state from which the program originates, unless also providing clinical experience in Arizona.
  3. Faculty shall be licensed in the state of origination of a distance learning nursing program.
  4. A distance learning nursing program shall provide students with supervised clinical and laboratory experiences so that program objectives are met and didactic learning is validated by supervised, land-based clinical and laboratory experiences.
  5. A distance-learning nursing program shall provide students with access to technology, resources, technical support, and the ability to interact with peers, preceptors, and faculty.
- C.** A nursing program, located in another state or territory of the United States, that wishes to provide clinical experiences in Arizona under A.R.S. § 32-1631(3), shall obtain Board approval before offering or conducting a clinical session. To obtain approval, the program shall submit a proposal package that contains:
  1. A self study, describing the program's compliance with R4-19-201 through R4-19-206; and
  2. A statement regarding the anticipated effect on clinical placements for students currently enrolled in an Arizona-approved nursing programs program.
- D.** The Board may require a nursing program approved under this Section to file periodic reports for the purpose of data collection or to determine compliance with the provisions of this Article. A program shall submit a report to the Board within 30 days of the date on a written request from the Board or by the due date stated in the request if the due date is after the normal 30-day period.
- E.** The Board shall approve an application to conduct clinical instruction in Arizona that meets the requirements in A.R.S. Title 32, Chapter 15 and this Chapter, and is in the best interest of the public. An applicant who is denied approval to conduct clinical instruction in Arizona may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- F.** The Board may rescind an approval held by an out-of-state nursing program to conduct clinical instruction in Arizona, in

accordance with R4-19-211.

- G.** If the Board finds that a nursing program located and approved in another state or territory of the United States does not meet requirements for nursing programs prescribed in R4-19-201 through R4-19-206, the Board shall provide a notice of deficiency to the program as prescribed in R4-19-211(A), (A)(1) and (A)(2).

1. If the program fails to correct the deficiency before the expiration of the period of correction, the Board shall rescind approval of the program as prescribed in R4-19-211(B)(1).
2. If the period of rescission, from the date of rescission to the date of reinstatement, is at any time concurrent with an applicant's education from the date of admission to the date of graduation, the Board shall withhold licensure unless the applicant meets all licensure requirements and completes any remedial education prescribed by the Board under R4-19-301(H). The Board shall ensure that the applicant has completed a curriculum that is equivalent to that of an approved nursing program.
3. If a nursing program provides evidence of compliance with R4-19-201 through R4-19-206 after the rescission of approval, the Board shall review the evidence, determine whether or not the nursing program complies with these standards, reinstate approval of the program if the program complies with these standards.

### **ARTICLE 3. LICENSURE**

#### **R4-19-301. Licensure by Examination**

- A.** An applicant for licensure by examination shall:

1. Submit to the Board a verified application on a form furnished by the Board that provides the following information about the applicant:
  - a. Full name and any former names used by the applicant;
  - b. Mailing address, including primary state of residence, and telephone number;
  - c. Place and date of birth;
  - d. Ethnic category and marital status, at the applicant's discretion;
  - e. Social security number for an applicant who lives or works in the United States;
  - f. Post-secondary education, including the names and locations of schools attended, graduation dates, and degrees received, if applicable;
  - g. Current employer or practice setting, including address, telephone number, position, and dates of service, if employed or practicing in nursing or health care, and previous employer or practice setting in nursing or health care, if any, if current employment is less than 960 hours within the past five years;
  - h. Any state, territory, or country in which the applicant holds a registered or practical nursing license and the license number and status of the license, including original state of licensure, if applicable;
  - i. The date the applicant previously filed an application for licensure in Arizona, if applicable or known;
  - j. Responses to questions regarding the applicant's background on the following subjects:
    - i. Pending disciplinary action by a nursing regulatory agency in the United States or its territories or current investigation of the applicant's nursing license in another state or territory of the United States,
    - ii. Felony conviction or conviction of an undesignated or other similar offense, and
    - iii. Unprofessional conduct as defined in A.R.S. § 32-1601;
  - k. Detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and
  - l. Certification in nursing including category, specialty, name of certifying body, date of certification, and expiration date.
2. Submit a completed fingerprint card for the purpose of obtaining a criminal history report under A.R.S. § 32-1606 if the applicant has not submitted a fingerprint card to the Board within the last two years; and
3. Pay the applicable fees.

- B.** If an applicant took the State Board Test Pool Examination (SBTPE), National Council Licensure Examination (NCLEX®) RN, or NCLEX-PN in any state or territory of the United States or in Canada, the applicant shall indicate on the application:

1. The date of the examination,
2. The location of the examination, and
3. The result of the examination.

- C.** If an applicant is a graduate of a nursing program in the United States that has been assigned a program code by the National Council of State Boards of Nursing, the applicant shall submit one of the following:

1. If the program is an Arizona-approved program, a statement signed by a nursing program administrator or designee verifying that:
  - a. The applicant graduated from a registered nursing program for a registered nurse applicant; or
  - b. The applicant completed a practical nursing program or graduated from a registered nursing program for a practical nurse applicant; or

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2. If the program is located in another state or territory and meets educational standards that are substantially comparable to Board standards for educational programs under R4-19-201 to R4-19-206 when the applicant completed the program, an official transcript sent directly from one of the following as:
  - a. Evidence of graduation from a diploma registered nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a registered nurse applicant.
  - b. Evidence of completion of a practical nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a practical nurse applicant.
- D. If an applicant is a graduate of a foreign nursing program and lacks items required in subsection (C), the applicant shall comply with subsections (A) and (B), submit verification of the status of any nursing licenses held, and submit the following:
  1. To demonstrate nursing program equivalency, one of the following:
    - a. Evidence of a passing score on the English language version of either the Canadian Nurses' Association Testing Service, or the Canadian Registered Nurse Examination or an equivalent examination;
    - b. A Certificate or Visa Screen Certificate issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or a report from CGFNS that indicates an applicant's program is substantially comparable to a U.S. program; or
    - c. A report from another credential evaluation service (CES) that is accepted by the Board. The Board shall accept reports from a CES if acceptance is in the best interest of the public and the CES submits the information required by the Board under R4-19-303.
  2. If an applicant's pre-licensure nursing program provided classroom instruction, textbooks, or clinical experiences in a language other than English, a test of written, oral, and spoken English is required. Clinical experiences are held in a foreign language if the principal language of the country or region where the nursing program was held is a language other than English. An applicant shall ensure that one of the following is submitted to the Board directly from the testing or certifying agency:
    - a. Evidence of a minimum score of 540 on the paper and pencil version or 207 on the computer-based version of the Test of English as a Foreign Language (TOEFL) and a minimum score of 50 on the Test of Spoken English (TSE) ~~or an equivalent score on a combined spoken and written~~ or a minimum score of 76 on the Internet-based TOEFL,
    - b. Evidence of a minimum score of 6.5 on the Academic Exam and 7.0 on the spoken exam of the International English Language Test Service (IELTS) Examination,
    - c. Evidence of a minimum score of 725 on the Test of English in International Communication (TOEIC) exam and 50 on the TSE,
    - d. A Visa Screen Certificate from CGFNS,
    - e. A CGFNS Certificate and a score of 50 on the TSE if the applicant did not take the Internet-based TOEFL or IELTS to meet certification requirements.
    - f. Evidence of a similar minimum score on another written and spoken English proficiency exam determined by the Board to be equivalent to the other exams in this subsection, or
    - g. Evidence of employment for a minimum of 960 hours within the past five years as a nurse in another country or territory where the principal language is English.
- E. An applicant for a registered nurse license shall attain:
  1. A passing score on the NCLEX-RN;
  2. A score of 1600 on the NCLEX-RN, if the examination was taken before July 1988; or
  3. A score of not less than 350 on each part of the SBTPE for registered nurses.
- F. An applicant for a practical nurse license shall attain:
  1. A passing score on the NCLEX-PN;
  2. A score of not less than 350 on the NCLEX-PN, if the examination was taken before October 1988; or
  3. A score of not less than 350 on the SBTPE for practical nurses.
- G. The Board shall grant a license to practice as a registered or practical nurse to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a license by examination may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- H. If the Board receives an application from a graduate of a nursing program and the program's approval was rescinded under R4-19-211 at any time during the applicant's nursing education, the Board shall withdraw the application or ensure that the applicant has completed a basic curriculum that is equivalent to that of a Board-approved nursing program and either:
  1. Grant licensure, if the program's approval was reinstated during the applicant's period of enrollment and the program provides evidence that the applicant completed a curriculum equivalent to that of a Board-approved nursing program;  
or
  2. By order, require successful completion of remedial education which may include clinical experiences, before grant-

ing licensure. The applicant shall obtain any required education while enrolled in a Board-approved nursing program.

**R4-19-302. Licensure by Endorsement**

- A. An applicant for a license by endorsement shall submit all of the information required in R4-19-301(A).
- B. In addition to the information required in subsection (A), an applicant for a license by endorsement shall:
  - 1. Submit evidence of a passing examination score in accordance with:
    - a. R4-19-301(E) for a registered nurse applicant, or
    - b. R4-19-301(F) for a practical nurse applicant.
  - 2. Submit evidence of the following:
    - a. Previous or current license in another state or territory of the United States, and
    - b. One of the following:
      - i. Completion of a nursing program that has been assigned a nursing program code by the National Council of State Boards of Nursing (NCSBN) at the time of program completion and meets educational standards substantially comparable to Board standards for educational programs in R4-19-201 to R4-19-206;
      - ii. If the applicant completed a nursing program that has been assigned a program code by the NCSBN but the program's approval was rescinded under A.R.S. § 32-1644(D) and R4-19-215 during the applicant's enrollment in the program, proof of completion of the program plus any remedial education required by the Board to mitigate the deficiencies in the applicant's initial nursing program;
      - iii. Completion of a nursing program that met the qualifications for a program code at the time of the applicant's graduation if before 1986 and the applicant was issued an initial license in another state or territory of the United States without being required to obtain additional education or experience;
      - iv. For a graduate of a foreign nursing program, completion of a nursing program that meets the requirements in R4-19-301(D)(1). In addition, an applicant who graduated from a foreign nursing program shall satisfy the English proficiency requirements in R4-19-301(D)(2) if the applicant has not practiced nursing for a minimum of 960 hours within the past five years in another state, territory, or country where English is the primary language.
- C. The Board shall grant a license to practice as a registered or practical nurse to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a license by endorsement may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**ARTICLE 5. ADVANCED AND EXTENDED NURSING PRACTICE**

**R4-19-505. Requirements for Advanced Practice Registered Nursing Certification**

- A. An applicant for certification as a registered nurse practitioner (RNP) or clinical nurse specialist (CNS) in a specialty area, shall:
  - 1. Hold a current Arizona registered nurse (RN) license in good standing or an RN license in good standing from a compact party state with multistate privileges and
  - 2. Submit an application to the Board that provides all of the following:
    - a. Full name and any former names;
    - b. Current mailing address and telephone number;
    - c. RN license number, application for RN license, or copy of a multistate compact RN license;
    - d. Educational background, including the name and location of all advanced practice registered nursing education programs or schools attended, the number of years attended, the length of each program, the date of graduation or completion, and the type of degree or certificate awarded;
    - e. Category and specialty area for which the applicant is applying;
    - f. Each current and previous employer, including address, type of position, and dates of employment;
    - g. Information regarding national certification or recertification as an advanced practice registered nurse in the category and specialty area, if applicable, for which the applicant is applying, including the name of the certifying organization, specialty area, certification number, date of certification, and expiration date;
    - h. Whether the applicant is under investigation or has disciplinary action pending against the applicant's nursing license or advanced practice certificate or license in any state, other than Arizona, or territory of the United States;
    - i. Whether the applicant has ever been convicted, entered a plea of guilty, nolo contendere, or no contest, or ever been sentenced, served time in jail or prison, or had deferred prosecution or sentence deferred in any felony or undesignated offense;
    - j. Whether the applicant has committed an act of unprofessional conduct as defined in A.R.S. § 32-1601;
    - k. Completed fingerprint card if the applicant has not submitted a fingerprint card to the Board within the last two years; and
    - l. Signature verifying the truthfulness of the information provided;

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- 3.m. ~~For an RNP applicant, submit an~~ An official transcript directly from an institution accredited under A.R.S. § 32-1644 either sent directly from the institution or obtained from a Board-approved database that provides evidence of a graduate degree with a major in nursing.
- 4.3. For a CNS applicant, submit:
- a. ~~An official transcript directly from an institution accredited under A.R.S. § 32-1644 or a Board-approved database that provides evidence of a graduate degree with a major in nursing; and~~
  - b. ~~Evidence~~ evidence that the applicant completed a program in a clinical specialty that prepared the applicant to practice as a CNS, as part of a graduate degree or post-masters program, either directly from the program or a Board-approved database; or
  - e. ~~If applying within one year of the effective date of this Article an applicant who did not complete a designated Clinical Nurse Specialist program under subsection (A)(4)(b), may submit a portfolio that:~~
    - i. ~~Contains evidence of mastery of core competencies and outcomes of a Clinical Nurse Specialist in a specialty area as prescribed in, *Statement on Clinical Nurse Specialist Practice and Education, 2nd edition, 2004*, which is incorporated by reference and available from the National Association of Clinical Nurse Specialists, 2090 Linglestown Road, Suite 107, Harrisburg, PA 17110, [www.nacns.org](http://www.nacns.org). This incorporation by reference does not include any later amendments or editions and is on file in the Board office; and~~
    - ii. ~~Is reviewed for consistency with the standards in subsection (i) and recommended for approval by a Board-appointed committee that consists of at least one CNS educator, one practicing CNS, and the Executive Director of the Board or the director's designee.~~
- 5.4. For an RNP applicant, ~~submit evidence of completion of an RNP program in the specialty area for which the applicant is applying either directly from the program or from a Board-approved data base and one of the following:~~
- a. ~~Evidence of completion of an RNP program that was part of a graduate degree, or post-masters program at an institution accredited under A.R.S. 32-1644; who completed a registered nurse practitioner program that was not part of a graduate degree from a regionally accredited university, submit documentation of completing a program in the specialty area for which the applicant is applying. The applicant shall ensure that any one of the following is submitted to the Board either directly from the program or from a Board-approved database:~~
  - a.b. ~~An official letter or a copy of a certificate or transcript from~~ Evidence of completion of a Board-approved RNP program;
  - b.c. ~~An official transcript from an RNP program offered by or affiliated with a college or university accredited under A.R.S. § 32-1644, which was at least nine months or two full-time semesters in duration and included theory and clinical experience; or~~
  - e.d. ~~If the program was not provided by an accredited college or university but is located in the U.S. or territories; an official transcript, a copy of a certificate, or an official letter that shows the program:~~
    - i. ~~Was at least nine months in length or equivalent to two semesters full-time study, or contained didactic and at least 500 hours clinical instruction;~~
    - ii. ~~Contained theory and clinical experiences sufficient to prepare the graduate to practice within the category and specialty area of practice for which the nurse is applying under A.R.S. § 32-1601; and~~
    - iii. ~~Was a RNP program recognized by the jurisdiction where it was located for the purpose of granting nurse practitioner licensure or certification;~~
- 6.5. For an applicant who completed an RNP program, CNS program, or graduate program in a foreign jurisdiction, submit an evaluation from the Commission on Graduates of Foreign Nursing Schools or a Board-approved credential evaluation service that indicates the applicant's program is comparable to a U.S. graduate nursing program, clinical nurse specialist program, or registered nurse practitioner program in the specialty area.
- 7.6. For a Clinical Nurse Specialist or Certified Nurse Midwife applicant, or for a Registered Nurse Practitioner applicant submitting an application after July 1, 2004, submit verification of current national certification or recertification in the applicant's category and specialty, as applicable, from a certifying body that meets the criteria in R4-19-501(B)(3);
- 8.7. For a CNS applicant who submits an application to the Board ~~within one year of the effective date of this Article, and completed a maternal-child clinical nurse specialist program that meets the requirements of subsection (A)(3), practices in a specialty that lacks a certification exam under R4-19-501, or is unable to qualify to sit for a but cannot be nationally certified due to lack of a certification exam that meets the requirements of R4-19-501,~~ submit:
- a. A description of the applicant's scope of practice that is consistent with A.R.S. § 32-1601(5),
  - b. One of the following:
    - i. A letter from a faculty member who supervised the applicant during the ~~master's degree~~ graduate program attesting to the applicant's competence to practice within the defined scope of practice;
    - ii. A letter from a supervisor verifying the applicant's competence in the defined scope of practice; or
    - iii. A letter from a physician, RNP, or CNS attesting to the applicant's competence in the defined scope of practice; and
  - c. A form verifying that the applicant has practiced a minimum of 500 hours in the specialty area within the past

two years, which may include clinical practice time in a CNS program; and  
9-8. Submit the required fee.

**B.** The Board shall continue to certify:

1. An RNP without a graduate degree with a major in nursing if the applicant:
  - a. Meets all other requirements for certification; and
  - b. ~~Was certified or licensed in the applicant's category and specialty area of advanced practice in this or another state~~ Provides evidence, directly from the jurisdiction, of certification or licensure in the advanced practice category and specialty in this or another state or territory of the United States, that either is current or was current at least six months before the application was received by the Board, and was originally issued:
    - i. Before January 1, 2001, if the RNP applicant lacks a graduate degree; or
    - ii. Before the effective date of this Section November 13, 2005 if the RNP's graduate degree is in a health-related area other than nursing.
2. An RNP or CNS applicant without evidence of national certification who received initial advanced practice certification or licensure in another state not later than July 1, 2004 and provides evidence, directly from the jurisdiction, that the certification or licensure is current; and
3. A CNS applicant who received initial certification or advanced practice licensure in this or another state not later than the effective date of this Section November 13, 2005 and provides evidence, directly from the jurisdiction, that the certificate or license is current without evidence of completing that the applicant completed a program in a clinical specialty.

**C.** The Board shall issue a certificate to practice as a registered nurse practitioner or a clinical nurse specialist in a specialty area to a registered nurse who meets the criteria in this Section. An applicant who is denied a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

**R4-19-506. Expiration of Advanced Practice Certificates; Practice Requirement; Renewal**

- A.** An advanced practice certificate issued after July 1, 2004, expires ~~if~~ when the certificate holder's RN license expires. Certificates issued on or before July 1, 2004 or those issued without proof of national certification under R4-19-505 (A)(8) (A)(7) and (B)(2) do not expire unless the RN license expires under A.R.S. § 32-1642 or the nurse has not practiced advanced practice nursing at the applicable level of certification for a minimum of 960 hours in the five years before the date the application is received. This requirement is satisfied if the applicant verifies that the applicant has:
1. Completed an advanced practice nursing education program within the past five years; or
  2. Practiced for a minimum of 960 hours within the past five years where the nurse:
    - a. Worked for compensation or as a volunteer, as an RNP or CNS, and performed one or more acts under A.R.S. § 32-1601(5) for a CNS or A.R.S. § 32-1601(15) for an RNP; or
    - b. Held a position for compensation or as a volunteer that required or recommended, in the job description, the level of advanced practice certification being sought or renewed.
- B.** A registered nurse requesting renewal of an advanced practice certificate or an RNP certificate issued after July 1, 2004, shall provide evidence of current national certification or recertification under R4-19-505(A)(7)-(6). This provision does not apply to a CNS granted a waiver of certification.
- C.** An advanced practice nurse requesting renewal of an advanced practice certificate who does not satisfy the practice requirement of subsection (A) shall either:
1. Provide evidence of current national certification in the category and specialty area of Board certification; or
  2. Complete coursework or continuing education activities at the graduate or advanced practice level that includes, at minimum, 45 contact hours of advanced pharmacology and 45 contact hours in a subject or subjects related to the category and specialty area of certification. Upon completion of the coursework, the nurse shall engage in a period of prospected clinical practice as specified in this subsection:
    - a. Precepted clinical practice shall be directly supervised by an advanced practice nurse in the same category and specialty area as the certification renewed or a physician who engages in practice with the same population as the certification being renewed.
    - b. Practice hours completed during the time-frame specified below may be applied to reduce the number of precepted clinical practice hours, except that in no case shall the hours be reduced by more than half the requirement. The nurse shall complete hours according to the following schedule:
      - i. 300 hours if the applicant has practiced less than 960 hours in only the last five years;
      - ii. 600 hours if the applicant has not practiced 960 hours in the last five years, but has practiced at least 960 hours in the last six years;
      - iii. 1000 hours if the applicant has not practiced at least 960 hours in the last six years, but has practiced 960 hours in the last seven to 10 years; or
    - c. If the nurse has not practiced 960 hours of advanced practice nursing in the category and specialty area being renewed in more than 10 years, complete a program of study as recommended by an approved advanced practice

nursing program that includes, at minimum, 500 hours of faculty supervised clinical practice in the category and specialty area of certification. An applicant who qualifies for any option in subsection (C)(2)(b) may complete the requirements of this subsection to satisfy the practice requirement.

~~C.D.~~ The Board shall renew a certificate to practice as a registered nurse practitioner or a clinical nurse specialist in a specialty area for a registered nurse who meets the criteria in this Section. An applicant who is denied renewal of a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

**R4-19-507. Temporary Advanced Practice Certificate**

- A. Based on the registered nurse's qualifications, the Board may issue a temporary certificate to practice as a registered nurse practitioner or a clinical nurse specialist in a specialty area. A registered nurse who is applying for a temporary certificate shall:
1. Apply for certification as an advanced practice nurse;
  2. Submit an application for a temporary certificate;
  3. Demonstrate authorization to practice as a registered nurse in Arizona on either a permanent or temporary Arizona license or a multistate compact privilege;
  4. Meet all requirements of R4-19-505 or meet the requirements of R4-19-505 with the exception of national certification under R4-19-505(A)(7)-(A)(6); and
  5. Submit evidence that the applicant has applied for and is eligible to take or has taken an advanced practice certifying examination in the applicant's category and specialty area of practice, if applicable.
- B. Temporary certification as an advanced practice nurse expires in six months and may be renewed for an additional six months for good cause. Good cause means reasons beyond the control of the temporary certificate holder such as unavoidable delays in obtaining information required for certification.
- C. Notwithstanding subsection (B), the Board shall withdraw a temporary advanced practice certificate under any one of the following conditions. The temporary certificate holder:
1. Does not meet requirements for RN licensure in this state or the RN license is suspended or revoked,
  2. Fails to renew the RN license upon expiration,
  3. Loses the multistate compact privilege,
  4. Fails the national certifying examination, or
  5. Violates a statute or rule of the Board.
- D. A temporary registered nurse practitioner certificate does not qualify an applicant for prescribing or dispensing privileges.
- E. An applicant who is denied a temporary certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the temporary certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

**R4-19-508. Scope of Practice of a Registered Nurse Practitioner**

- A. An RNP shall refer a patient to a physician or another health care provider if the referral will protect the health and welfare of the patient and consult with a physician and other health care providers if a situation or condition occurs in a patient that is beyond the RNP's knowledge and experience.
- B. In addition to the scope of practice permitted a registered nurse, a registered nurse practitioner, under A.R.S. §§ 32-1601(15) and 32-1606(B)(12), may perform the following acts within the limits of the specialty area of certification:
1. Examine a patient and establish a medical diagnosis by client history, physical examination, and other criteria;
  2. For a patient who requires the services of a health care facility:
    - a. Admit the patient to the facility,
    - b. Manage the care the patient receives in the facility, and
    - c. Discharge the patient from the facility;
  3. Order and interpret laboratory, radiographic, and other diagnostic tests, and perform those tests that the RNP is qualified to perform;
  4. Identify, develop, implement, and evaluate a plan of care for a patient to promote, maintain, and restore health;
  5. Perform therapeutic procedures that the RNP is qualified to perform;
  6. Prescribe treatments;
  7. If authorized under R4-19-511, prescribe and dispense drugs and devices; and
  8. Perform additional acts that the RNP is qualified to perform.
- C. An RNP shall only provide health care services within the nurse practitioner's scope of practice for which the RNP is educationally prepared and for which competency has been established and maintained. Educational preparation means academic coursework or continuing education activities that include both theory and supervised clinical practice.



NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

[R06-458]

**PREAMBLE**

**1. Sections Affected**

R12-15-704  
R12-15-722  
R12-15-723  
R12-15-725  
R12-15-725

**Rulemaking Action**

Amend  
Amend  
Amend  
Repeal  
New Section

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 45-105(B)(1) and 45-576(H)

Implementing statutes: A.R.S. § 45-576

**3. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 837, March 17, 2006

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Doug Dunham  
Address: Arizona Department of Water Resources  
3550 N. Central Ave.  
Phoenix, AZ 85012  
Telephone: (602) 771-8590  
Fax: (602) 771-8689  
E-mail: [dwdunham@azwater.gov](mailto:dwdunham@azwater.gov)

**5. An explanation of the rules, including the agency's reasons for initiating the rules:**

**Background**

The assured water supply program ("AWS Program") was created as part of the 1980 Groundwater Management Act ("Groundwater Code"), and operates within Arizona's five Active Management Areas (AMAs). Within the five AMAs, the AWS Program requires developers of subdivisions to demonstrate a 100-year assured water supply prior to recordation and sale of the lots. This assured supply can be demonstrated in one of the following two ways: (1) the developer can obtain a written commitment of service for the development from a water provider that the Director of the Department of Water Resources ("Director") has designated as having assured water supply for its entire system; or (2) the developer can demonstrate to the Director that the specific subdivision has an assured water supply, in which case the director will issue a certificate of assured water supply for the subdivision plat.

The AWS Program has two primary purposes. First, the program facilitates the achievement of the AMA's water management goal by requiring an applicant for a designation or certificate to demonstrate that its projected groundwater use is consistent with the achievement of the AMA's management goal and management plan. The Phoenix, Prescott and Tucson AMAs have a management goal of safe-yield by 2025 or earlier. A.R.S. § 45-562(A). The management goal of the Santa Cruz AMA is to maintain a safe-yield condition and to prevent local water tables from experiencing long-term declines. A.R.S. § 45-562(C). The management goal of the Pinal AMA, where a predominately agricultural economy exists, is to allow development of non-irrigation uses and to preserve existing agricultural economies for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses. A.R.S. § 45-562(B).

The second purpose of the AWS Program is to protect consumers purchasing homes by requiring demonstration of a 100-year water supply for all new subdivisions. The water supply must be physically, continuously and legally available for 100 years and must be of adequate quality. Also, the applicant must have the financial capability to construct any water facilities necessary to make the water supply available for the proposed use.

In 1995, the Department of Water Resources ("Department") adopted assured water supply rules ("AWS rules"). These rules set forth specific requirements that applicants for certificates and designations must meet to demonstrate an assured water supply. Among other things, the AWS rules contain criteria for demonstrating that the projected

groundwater use of a water provider or development will be consistent with achieving the AMA's management goal. The AWS rules were amended in 2006, primarily to improve the efficiency of the AWS Program. No changes were made to the criteria for demonstrating consistency with achieving an AMA's management goal.

### **Consistency with Management Goal Requirement for the Pinal AMA**

It is important to recognize the role of the AWS Program in supporting the management goal of the Pinal AMA, specifically the requirement to preserve future water supplies for non-irrigation uses. The AWS Program requirements apply to new subdivisions. The program requirements do not apply to the division of parcels into five or fewer lots, nor do they apply to most industrial water uses. Existing municipal uses, including undeveloped lots platted prior to 1995, are subject to the program requirements only if a municipal water provider has voluntarily subjected itself to the standard for its entire service area through the assured water supply designation process. If substantial subdivision development continues as expected in the Pinal AMA, the AWS Program could play a significant role in supporting the management goal requirement to preserve future water supplies for non-irrigation uses. While the AWS Program does not afford complete assurances that the management goal will be met, it can ensure that water use by new subdivisions does not hinder the AMA's ability to achieve the management goal.

Under the current AWS rules, the consistency with management goal requirement for the Pinal AMA is the most lenient of all of the AMAs in terms of allowable groundwater use. For example, the AWS rules for the Phoenix and Tucson AMAs allocate groundwater use based on a small percentage of estimated demand (for certificates) or historical demand (for designations). The rules for the Pinal AMA allocate groundwater based on the build-out population of the development (for certificates) or the annual service area population of the municipal provider (for designations). In the other AMAs, the allocation of allowable groundwater use decreases over time, while in the Pinal AMA, the allocation does not.

In the Phoenix and Tucson AMAs, the groundwater allowance<sup>1</sup> for designated providers that served water prior February 7, 1995 is calculated by determining the volume of water served by the provider in 1994. That volume is then multiplied by a factor of 15 in the Tucson AMA and 7.5 in the Phoenix AMA. R12-15-724(A)(2) and R12-15-727(A)(2). For a provider established after February 7, 1995, the groundwater allowance is zero. R12-15-724(A)(3) and R12-15-727(A)(3). The groundwater allowance for certificates in the Phoenix and Tucson AMAs is calculated by multiplying the annual estimated water demand for the proposed subdivision by an allocation factor based on the management period during which the application is submitted. For the second management period in the Phoenix AMA, the allocation factor was 7.5, while the current allocation factor is 4.0. The allocation factor decreases to 2.0 in the fourth management period, 1.0 in the fifth management period, and zero beginning in 2025. R12-15-724(A)(1).

In contrast, the current Pinal AMA rules allocate an annual volume of 125 Gallons Per Capita Per Day ("GPCD") for most certificates and designations. This allocation is made regardless of when the application is received. Furthermore, for designated providers, instead of decreasing over time, the groundwater allowance actually increases as the provider's service area population grows. Additionally, if any portion of the groundwater allowance is not used in a year, the unused portion carries forward (or "rolls over") for use in subsequent years.

In the other AMAs, extinguishment credits (credits earned for the extinguishment of a grandfathered groundwater right) are allocated as a lump sum volume of groundwater that may be used without replenishment. The volume of groundwater allocated for extinguishment credits decreases each year, depending on the year in which the grandfathered right ("GFR") is extinguished, until 2025 when the allocation reaches zero. In the Pinal AMA, by contrast, the allocation for extinguishment credits does not decrease. Also, instead of a lump sum volume, the allocation is an annual allotment of allowable groundwater use that continues in perpetuity. Furthermore, once the extinguishment credit is created and pledged to a certificate or designation, any unused portion of the allocation for any particular year rolls over for use in subsequent years.

In 2000, in conjunction with the 20th anniversary of the Groundwater Code, Governor Jane Dee Hull established the Governor's Water Management Commission. This Commission was tasked to review the effectiveness of the Groundwater Code and make recommendations for any potential statutory or rule modifications. As part of this process, the Commission recognized that the Pinal AMA presented unique challenges due to the dual nature of the AMA's management goal of preserving the agricultural economy while preserving future water supplies for non-irrigation uses. It was further recognized that the current AWS rules are insufficient to allow the AMA to meet its management goal. The Water Management Commission recommended that the Department work with the Pinal AMA Groundwater Users Advisory Council ("GUAC")<sup>2</sup> and water users in the AMA to find a solution to this issue.

As part of this continuing effort, in October 2001, after a lengthy public process, water users in the Pinal AMA reached an understanding that the AMA's management goal requirement to "preserve future water supplies for non-irrigation uses" should be interpreted as ensuring a long-term, reliable supply of water for municipal and industrial uses, and that this interpretation would allow for the appropriate use of groundwater supplies by the municipal and industrial sectors. The water users also committed to develop a comprehensive water management program for the AMA by January 1, 2005 through a public process. An integral part of the development of this water management program was to evaluate water supplies as they relate to the AWS rules for the AMA in order to ensure a sustainable

1. The groundwater allowance is a volume of groundwater that is consistent with the management goal of the AMA.

2. The Groundwater Code established a GUAC for each AMA, including the Pinal AMA. The GAUC's duties include advising and making policy recommendations to the Director and the AMA's area director.

water supply for municipal and industrial demand, taking into account conversion of agricultural uses to municipal uses. In addition, the water users called for local interests to work together with the Department to work out the specifics for the rule modifications, including a transition period.

Since January 2002, the Department has cooperated closely with the Pinal AMA GUAC as the GUAC considered the necessary changes to the AWS rules. To help facilitate its review of the existing AWS Program, the GUAC established a Water Management Subcommittee, consisting of representatives from the GUAC, local water interests, and technical advisors from the Pinal AMA staff. The efforts of the subcommittee, with the Department's assistance, provided the basis for the recommended modifications to the AWS rules for the Pinal AMA.

As a culmination of the community-based efforts, on February 23, 2006 the Pinal AMA GUAC recommended changes to the AWS rules to facilitate the achievement of the management goal of the AMA. The Department closely followed the recommendations of the Pinal AMA GUAC in drafting the proposed rule amendments, taking into account comments received during the four months the Department sought public input.

### **Issues Raised**

While there are a number of issues with the existing AWS rules for the Pinal AMA, the biggest concern is that the allowable volume of groundwater that may be used consistent with the management goal pursuant to the AWS rules is, in reality, not at all consistent with the achievement of the AMA's management goal to preserve future water supplies for non-irrigation uses. Given the AMA's rapid subdivision development, it would be impossible to preserve a long-term, reliable supply of water for municipal uses when the rules so over-allocate groundwater supplies that little or no groundwater replenishment is required for new subdivisions and minimal renewable water supplies are being brought into the AMA. While several sources of renewable supplies are available, one significant source is replenishment provided through the Central Arizona Groundwater Replenishment District ("CAGRDR"), as in the Phoenix and Tucson AMAs. However, due to the large volume of allowable groundwater use permitted under the existing Pinal AWS rules, nearly all the CAGRDR's supplies are used in the Phoenix and Tucson AMAs. Through 2003, the replenishment obligation for the Pinal AMA totaled just 212 acre-feet (AF), and the CAGRDR satisfied this obligation by purchasing and extinguishing long-term storage credits within the AMA from the Central Arizona Water Conservation District.

The replenishment obligation for a subdivision is determined by subtracting the groundwater allowance and extinguishment credits available to the subdivision from the volume of groundwater delivered to the subdivision. The remaining volume, if any, must be replenished. For a subdivision located on land without a GFR, the Pinal AMA's groundwater allowance, which in most cases is based on a water use rate of 125 GPCD for the subdivision's projected build-out population, is typically sufficient to meet most, if not all, of the subdivision's 100-year water demand.

For example, according to a recent study conducted by the CAGRDR, lots constructed since 1995 within the replenishment district have used 0.4 AF of water on an average annual basis, which includes water used for turf and other landscaping in subdivision common areas. Thus, for a typical new subdivision of 3.5 houses per acre (AC), the projected annual demand would be 1.4 AF/AC. Assuming a typical density of three persons per household, the 125 GPCD groundwater allowance would allow such a subdivision to annually use 1.47 AF/AC of groundwater supplies. Because the allowable volume of groundwater supplies in this case is greater than the projected annual demand, the replenishment obligation would be zero. Thus under the existing AWS rules, the subdivision would be allowed to develop on 100% unreplenished groundwater.

For a subdivision located on land to which an irrigation GFR or a type 1 non-irrigation GFR is appurtenant, the amount of groundwater that may be used consistent with the management goal is even greater. After the GFR is extinguished, the extinguishment credits, which are calculated at the rate of 1.5 AF/AC, are added to the groundwater allowance. Under the existing AWS rules, both the groundwater allowance and extinguishment credits are permanent, in that they are allocated on an annual basis in perpetuity. Together, the groundwater allowance and the extinguishment credits allocate a volume of groundwater that is, in almost all cases, far in excess of the subdivision's 100-year water demand, thereby requiring no replenishment. In fact, excess extinguishment credits are often sold to offset potential replenishment obligations that might exist for subdivisions located on lands without GFR. The GUAC found that, based on the average subdivision water use, the allowable groundwater use and the generous extinguishment credits in the Pinal AMA, an acre of land with GFRs could support two additional acres of development without incurring any additional replenishment obligation.

This lack of replenishment means that once existing and approved municipal groundwater demands in the Pinal AMA exceed the AMA's renewable groundwater supplies (i.e., net natural recharge), groundwater will be mined to meet those demands. Currently, the Pinal AMA is not in an over-draft condition in which groundwater withdrawals exceed net natural recharge. Because of rapid subdivision development; however, such an over-draft condition is expected to occur in the next two to three years under the existing AWS rules. Hydrologic studies completed in December 2004 as part of an evaluation of the AMA's groundwater budget determined that the AMA's renewable groundwater supplies total 82,500 AF on a long-term average annual basis. Since 1999, existing and approved municipal groundwater demands in the AMA have increased over 250%, from approximately 17,000 AF per year to over 60,000 AF per year. Pinal County planning and development officials estimated in March 2005 that about 300,000 lots have been zoned but not yet platted for subdivision development in that portion of the county located within the Pinal AMA, including

the five incorporated communities of Casa Grande, Coolidge, Eloy, Florence, and Maricopa. Assuming the CAGR's average annual use rate of 0.4 AF/AC for each lot, these 300,000 zoned but unplatted lots would have an annual demand of 120,000 AF at build-out. This volume far exceeds the estimated renewable groundwater supply of 82,500 AF per year.

Absent a change in the Pinal AWS rules, allocation of mined groundwater supplies could conceivably continue until the Pinal AMA's aquifers would be fully allocated to 1,100 feet below land surface ("BLS"), which is the maximum 100-year depth-to-static water level allowed by the AWS rules. R12-15-716(B)(2). At this point, no further AWS applications based on groundwater could be approved due to a lack of physical availability. Prior to that point, AWS applicants would have increasing difficulty demonstrating physical availability of groundwater supplies. Applications would likely be denied first in dewatered areas overlying cones of depression or in areas where bedrock or other non-water bearing strata limit the depth of the aquifer to less than 1,100 feet BLS. It is expected that applications would also be denied in high-growth areas where demand for groundwater is already high. In addition, demonstrating physical availability would be more difficult within the AMA's extensive agricultural areas. Pursuant to the Department's interpretation of the AMA's management goal in the second and third management plans, groundwater in storage to a depth of 1,000 feet BLS is available for all water uses. Consequently, the Department must assume when analyzing physical availability that all remaining farmland with an irrigation GFR will continue to be irrigated using groundwater supplies to 1,000 feet BLS unless otherwise prevented from doing so by shallow bedrock or other limiting conditions. While it is difficult to know with any certainty what the economic consequences would be if the Department denied AWS applications due to lack of physical availability of groundwater, the consequences would likely be dire if those in the development and business communities perceived the AMA to be running out of groundwater.

Another problem caused by the Pinal AMA's generous groundwater allowance is that it helps to encourage subdivision development on land without a GFR by greatly minimizing or eliminating entirely the replenishment obligation on such land. As a consequence, large tracts of desert land are being developed, while nearby farmland continues to be irrigated. Failure to convert agricultural uses to municipal uses under such circumstances is resulting in an additional burden being placed on the AMA's aquifers, hastening their depletion. Farmers in the AMA are particularly concerned with this problem, as they strongly believe that the Groundwater Code intended that irrigation uses be converted to non-irrigation uses as farming areas urbanized.

In addition to the adverse economic consequences that are likely to occur in the Pinal AMA if the rules are not changed, it is likely that the groundwater mining allowed under the current rules will eventually result in significant health and safety problems for existing residents of the AMA. When the aquifer is depleted, the AMA will likely experience shortages of water supplies for such essential activities as drinking, sanitation and fire fighting.

Several other issues were raised during the rule evaluation process. One issue raised by farmers in the Pinal AMA is that if the AWS rules are modified and the CAGR is unable to enroll new members at some point in the future, there might be an insufficient volume of groundwater supplies allocated through extinguishment credits to allow at least some level of subdivision development to take place.

An issue for those in the regulated community is the need to ensure a transition period to allow the Pinal AMA's designated providers sufficient time to plan and obtain renewable supplies to serve future subdivisions, and to allow the designated providers to use a limited volume of groundwater supplies to meet the water demands of their existing service area populations, as well as their committed demand.

A final concern is the need to give designated providers in the Pinal AMA credit for annual incidental recharge within their service areas, as is currently allowed for designated providers in the Phoenix and Tucson AMAs. An incidental recharge credit was not included under the existing AWS rules for the Pinal AMA because the AMA's generous groundwater allowance was considered sufficient.

#### **Stakeholders' Process**

On July 26, 2006, the Department began the stakeholders' process for the modification of the Pinal AMA AWS rules. This consisted of four public meetings to discuss issues and proposed rule language, with the last meeting held on September 29, 2006. The Department also solicited written comments during an informal comment period from July 26 through October 20, 2006. This rulemaking incorporates revisions the Department made in response to comments from the Pinal AMA GUAC, stakeholders and the public.

#### **Explanation of Proposed Rules**

Under the proposed rules, the groundwater allowance for new certificates in the Pinal AMA will be a "lump sum" that may be used in any year, instead of an annual allocation. In addition, the groundwater allowance will be calculated by multiplying the build-out population of the subdivision by an allocation factor, instead of a GPCD rate. The allocation factor will decrease over time, depending when the application is filed, until it reaches zero in 2025. This structure is similar to the current rules for the Phoenix and Tucson AMAs.

Extinguishment credits earned as a result of the extinguishment of a GFR in the AMA prior to the effective date of this rulemaking ("existing extinguishment credits") will retain their annual allocation nature, regardless of when they are pledged to an assured water supply certificate or designation. Existing extinguishment credits pledged to an assured water supply designation prior to the effective date of the of this rulemaking will retain the current "rollover

provision,” while existing extinguishment credits pledged to an assured water supply designation on or after that date will not. However, if a designated provider (designated before or after the effective date of this rulemaking) takes over service to a subdivision with a certificate supported by extinguishment credits that were pledged to the certificate before this rulemaking becomes effective, the designated provider may use the extinguishment credits and any of the credits not used during a year will rollover to the following year. Consistent with the Department’s current practice, the Department will consider a GFR to have been extinguished on the date a notarized statement of extinguishment of the GFR is filed with the Department pursuant to R12-15-723(A).

Extinguishment credits earned as a result of the extinguishment of a GFR in the AMA on or after the effective date of this rulemaking (“new extinguishment credits”) will function like the credits in the Tucson, Phoenix, and Prescott AMAs. The new structure will have a single lump sum allocation that may be used in any year. The allocation factor used to determine the amount of the extinguishment credits will also decrease over time similar to the other AMAs, but much more slowly. In the other AMAs, the allocation factor will reach zero by 2025, whereas in the Pinal AMA, it will reach zero after 2054. Unique to the Pinal AMA, this rulemaking also includes a “freezing provision” for the declining allocation factor. If, prior to January 1, 2055, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), the allocation factor is frozen at that time and will no longer decrease until the moratorium has ended. When the moratorium ends, the decreasing allocation factor will resume where it left off.

Municipal providers designated as having an assured water supply as of the effective date of this rulemaking, and undesignated municipal providers serving water as of that date that submit a complete and correct application for designation before January 1, 2012, will be allocated a groundwater allowance using a methodology similar to the groundwater allowance calculation under the current AWS rules, but with certain differences. These providers will receive a groundwater allowance of 125 GPCD based on their service area population as of the effective date of this rulemaking. This population-based groundwater allowance will retain the permanent, annual allocation structure currently used in the Pinal AMA rules. However, this will be a set annual volume that will not increase as the population increases and there will be no rollover provision for any portion not used in a year. Undesignated municipal providers serving water as of the effective date of this rulemaking that submit a complete and correct application for designation on or after January 1, 2012, and municipal providers initiating service after the effective date of this rulemaking, will receive a groundwater allowance of zero.

For providers designated as of the effective date of this rulemaking, in addition to the population-based groundwater allowance and any extinguishment credits that may be pledged to the designation, the providers will receive a “transition volume” of allowable groundwater use based on “committed demand.” Just like the population-based groundwater allowance, the transition volume is a permanent, annual allocation of allowable groundwater use without any rollover provision. The transition volume is applicable to residential lots within plats recorded as of the effective date of this rulemaking (“committed lots”) and to which the provider commences water service after the effective date of this rulemaking but no later than January 1, 2010. The volume is calculated by multiplying the number of these lots by 0.35 acre-feet per lot (the equivalent of 125 GPCD x 2.5 persons per housing unit). The Department included a cut-off date of January 1, 2010 to prevent the transition volume from increasing indefinitely. The Department determined that January 1, 2010 is a reasonable cut-off date because it coincides with the beginning of the fourth management period and is the date that extinguishment credits begin to decrease in the AMA.

The allocation for these lots will be included in the designated provider’s groundwater allowance when the lots are occupied and served by the provider on or before January 1, 2010. Beginning with the first annual report year after the effective date of this rulemaking, the transition volume will be added to the designated provider’s groundwater allowance account based on the number of committed lots served in the reporting year, as reported to the Department in the designated provider’s annual report. This process will continue for committed lots to which the provider commences service through January 1, 2010. If, after that date, there are committed lots that have not been developed and served, the designated provider will receive zero groundwater allocation for those lots.

Designated providers (designated before or after this rulemaking become effective) will also be given a 4% incidental recharge factor (identical to the Tucson and Phoenix AMAs).

#### **Effective Date of Rules**

Pursuant to A.R.S. § 41-1032(B), the Department intends to specify an effective date for this rulemaking more than 60 days after the filing of the rules with the Secretary of State. The Department intends to specify an effective date of 180 days after the rules are filed with the Secretary of State to allow the regulated community a reasonable period of time to make the necessary adjustments to come into compliance with the new rules.

#### **Rule by Rule Summary**

##### **R12-15-704. Certificate of Assured Water Supply**

The proposed amendments to R12-15-704 include inserting a new subsection (L) relating only to the Pinal AMA. The new subsection will exempt a subdivision from the requirement to obtain a certificate if all of the following apply: (1) the plat for the subdivision was recorded prior to the effective date of proposed rule R12-15-725; (2) there are no material plat changes; (3) the municipal provider was designated as having an assured water supply when the plat was

recorded, but is no longer designated; and (4) water service is currently available to each lot. The purpose of this subsection is to exempt a subdivision from the requirement to obtain a certificate if a designated provider committed to serve the subdivision at the time the plat was recorded, but the designation terminated after the effective date of proposed rule R12-15-725 (for any reason, including inability to comply with the more stringent groundwater allowance provision in the new rule), provided that certain conditions are met. One condition is that water service must be available to each lot. Also, to prevent the subsection from being used to avoid assured water supply requirements, it will apply only if the subdivision plat is recorded before proposed rule R12-15-725 becomes effective, and there are no material changes to the recorded plat.

The current subsection (L), which sets forth the procedures for requesting a letter stating that the owner is not required to obtain a certificate of assured water supply, is being re-lettered to (M) to conform to the addition of the new subsection (L). The subsection is also being amended to include a reference to the new subsection (L) so that the procedures in the subsection will apply to that subsection.

#### **R12-15-722. Consistency with Management Goal**

The proposed amendments to R12-15-722 change the criteria for demonstrating consistency with management goal for the Pinal AMA. The consistency with management goal criteria for the other AMAs are not changed. The following is a description of the amendments to each subsection:

Subsection (A) currently provides that the Director shall determine the volume of groundwater that may be used in the Phoenix, Pinal, Prescott or Tucson AMA consistent with the AMA's management goal by adding the applicable groundwater allowance for the certificate or designation, the amount of any extinguishment credits pledged to the certificate or designation, and any groundwater use that is consistent with the goal pursuant to the Groundwater Code. This subsection is amended to remove the references to the Pinal AMA because the criteria for the Pinal AMA are moved to separate subsections (subsections (C), (D) and (E)). In addition, language is added to clarify that the volume calculated pursuant to the subsection is a volume of groundwater that may be used consistent with the management goal *for at least 100 years*. Minor grammatical changes are also being made.

Subsection (B) currently provides that the volume of groundwater calculated in subsection (A) is a volume that may be used consistent with the management goal of the Phoenix, Prescott or Tucson AMA for at least 100 years. This language is deleted because identical language is being added to subsection (A). In its place, language is added to subsection (B) to provide that the Director shall determine that a proposed groundwater use in the Phoenix, Prescott or Tucson AMA is consistent with the AMA's management goal if the volume calculated in subsection (A) is equal to or greater than the portion of the estimated water demand to be met with groundwater. This language is currently in subsection (D), and is simply being moved to subsection (B).

Subsection (C) is amended by deleting the existing language, which applies only to the Pinal AMA, and adding new language describing how the Director will calculate the volume of groundwater that may be used for a certificate in the Pinal AMA consistent with the AMA's management goal. The new language states that the Director shall calculate the volume by adding together: (1) the groundwater allowance according to R12-15-725(A)(1); (2) the amount of any new extinguishment credits pledged to the certificate according to R12-15-725(B); (3) the amount of any existing extinguishment credits pledged to the certificate, calculated by multiplying the annual amount of the credits by 100; and (4) any groundwater that is consistent with the management goal pursuant to the Groundwater Code.

This formula for calculating the volume of groundwater that may be used for a certificate consistent with the management goal of the Pinal AMA is similar to the formula in the current rules, with two exceptions. First, the amount of the groundwater allowance according to R12-15-725(A)(1) is less than the amount of the groundwater allowance under the current rules (see the explanation of the changes to R12-15-725 below). Second, beginning in 2010, the volume of groundwater allocated for new extinguishment credits according to proposed rule R12-15-725(B) is less than the volume allocated for extinguishment credits under the current rules. Under proposed rule R12-15-725(B), the volume will no longer be an annual allocation, but will be a lump sum that may be used in any year. The allocated volume gradually decreases over time, beginning in 2010, depending on when the GFR is extinguished. Existing extinguishment credits will retain their annual allocation structure.

Subsection (D) currently provides that for the Pinal AMA, the Director shall determine that a proposed groundwater use is consistent with the AMA's management goal if the volume calculated in subsection (A) is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater. This language is amended so that it applies only to certificates (designations are covered by subsection (F)) and by replacing the reference to subsection (A) with a reference to subsection (C). In addition, because the volume calculated in subsection (C) is no longer an annual volume, the word "annual" is removed.

A new subsection (E) is added to describe how the Director will calculate the volume of groundwater that may be used for a designation in the Pinal AMA consistent with the AMA's management goal. This subsection provides that the director shall calculate the volume on an annual basis by adding the following: (1) the amount of the groundwater allowance according to R12-15-725(A)(2), with no rollover of any unused portion of the annual allowance; (2) the amount of any new extinguishment credits pledged to the designation, according to R12-15-725(B), divided by 100 (the credits may be used in any year); (3) the annual amount of any existing extinguishment credits pledged to the designation; and (4) any groundwater that is consistent with the management goal pursuant to the Groundwater Code.

The new subsection (E) changes the volume of groundwater that may be used by a designated provider consistent with the management goal in several respects. First, for most providers, the amount of the groundwater allowance according to R12-15-725(A)(2) will be less than the amount of the groundwater allowance under the current rules (see the explanation of the changes to R12-15-725 below). In addition, although the groundwater allowance will continue to be an annual amount added to the provider's designation each year, any portion of the annual amount not used in a year will not rollover to the next year. The current rules allow for the rollover of any unused annual groundwater allowance. Second, as explained below, the new subsection changes the manner in which groundwater is allocated for new extinguishment credits pledged to a designation and, in some cases, for existing extinguishment credits pledged to a designation after the effective date of this rulemaking.

For existing extinguishment credits, no changes will be made to the annual volume of the credits. In addition, if the credits are pledged to a designation prior to the effective date of R12-15-725, any portion of the annual amount not used during a year will rollover to the next year. However, if existing extinguishment credits are pledged to a designation on or after the effective date of R12-15-725, any unused portion of the annual amount will *not* rollover to the next year, with one exception. If the existing extinguishment credits were originally pledged to a certificate before the effective date of R12-15-725 and are subsequently used to support a provider's designation under R12-15-723(G)(2), any unused portion of the annual amount of the credits will rollover to the next year. Under the current Pinal AMA rules, all unused extinguishment credits are allowed to rollover to the following year, regardless of when the credits were earned or pledged.

For new extinguishment credits, the volume of groundwater allocated for the credits will be determined according to R12-15-725(B). Beginning in 2010, the volume allocated decreases over time, depending on when the grandfathered right is extinguished. Although new extinguishment credits will have a lump sum volume, the Department will annualize the credits by dividing them by 100 to determine whether an applicant's proposed groundwater use is consistent with the AMA's management goal. The credits may be used in any year; however, which means that the municipal provider will have the flexibility of determining when to use the credits.

A new subsection (F) is added. This subsection provides that for a designation in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the AMA's management goal if the annual volume calculated in subsection (E) is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater. This language is consistent with the language in subsection (D) of the current rules, which sets forth the manner in which the Director will determine whether a proposed groundwater use in the Pinal AMA is consistent with the AMA's management goal.

#### **R12-15-723. Extinguishment Credits**

R12-15-723(D) contains a list of grandfathered rights that may not be extinguished in exchange for extinguishment credits. This subsection is amended by adding the following to the list: "Any grandfathered right in the Pinal AMA beginning in the first calendar year in which the allocation factor for the extinguishment of a grandfathered right is zero, pursuant to R12-15-725(B)(3) or (4)." This is a conforming amendment that simply clarifies in R12-15-723 that a grandfathered right in the Pinal AMA may not be extinguished for credits after the allocation factor used to determine the volume of extinguishment credits is zero under R12-15-725(B). Minor grammatical changes are made in R12-15-723(A) and (G).

#### **R12-15-725. Pinal AMA - Groundwater Allowance and Extinguishment Credits Calculation**

R12-15-725 currently sets forth the method for calculating the groundwater allowance and extinguishment credits for certificates and designations in the Pinal AMA. This rule is repealed and replaced with a new rule that contains a new method for calculating the groundwater allowance and extinguishment credits in the Pinal AMA. The following is a description of the provisions of the new rule.

##### **Groundwater Allowance**

###### *Certificates*

Under proposed rule R12-15-725(A)(1), the groundwater allowance for a certificate will be calculated by multiplying the allocation factor specified in the rule for the date of application by the annual estimated water demand for the proposed subdivision. The application factor is 10 for applications filed during the third and fourth management periods; five for applications filed during the fifth management period; and zero for applications filed after the fifth management period. The groundwater allowance is a lump sum, rather than an annual amount.

This method of calculating the groundwater allowance for a certificate is different than the method set forth in the current rule. Under the current rule, if the proposed subdivision will be served by a small municipal provider or a large municipal provider regulated under the Total GPCD Program or the Non-Per Capita Conservation Program in the management plan in effect at the time of the application, the groundwater allowance for the certificate is an annual amount calculated by multiplying the subdivision's build-out population by 125 GPCD, and then multiplying the product by 365 days. If the proposed subdivision will be served by a municipal provider regulated under the Alternative Conservation Program in the management plan in effect at the time of the application, the groundwater allowance depends on whether the municipal provider was in existence as of January 1, 1990. If the provider was in existence as of that date, the groundwater allowance is zero. If the provider was not in existence as of that date, the

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groundwater allowance is an annual amount calculated by multiplying the proposed subdivision's build-out population by 62.5 GPCD, and then multiplying the product by 365 days.

*Designations*

Under proposed rule R12-15-725(A)(2), regardless of the conservation program the municipal provider is regulated under, if the provider is designated as having an assured water supply on the effective date of the Section, or if the provider provided water to customers prior to the effective date of the Section and submits a complete and correct application for designation prior to January 1, 2012, the provider's annual groundwater allowance will be calculated by first multiplying its service area population as of the effective date of the Section by 125 gallons per capita per day, and then multiplying the product by 365 days. The resulting volume will then be converted to acre-feet by dividing the number by 325,851 gallons. That volume will then be added to a transition volume, calculated by multiplying 0.35 acre-feet by the number of residential lots within the provider's service area that were recorded as of the effective date of the Section but not served water as of that date, and to which the provider commenced water service by January 1, 2010.

If the municipal provider supplied water to customers prior to the effective date of the Section, but was not designated as having an assured water supply on that date and does not submit a complete and correct application for designation prior to January 1, 2012, or if the provider began providing water to its customers after the effective date of the Section, the provider's groundwater allowance will be zero.

All designated providers will receive an annual incidental recharge volume, calculated by multiplying the provider's total water use in the previous calendar year by an incidental recharge factor of 4%. A designated provider may apply to the Director for a different incidental recharge factor under the criteria set forth in the Section.

This method for calculating the groundwater allowance for designated providers is different than the method used to calculate the groundwater allowance under the current rule. Under the current rule, the method for calculating the groundwater allowance depends on the conservation program the provider is regulated under at the time of application. If the provider is a small municipal provider or a large municipal provider regulated under the Total GPCD Program or the Non-Per Capita Conservation Program in the management plan in effect at the time of application, the provider's annual groundwater allowance is calculated by multiplying the provider's service area population for the calendar year by 125 GPCD, and then multiplying the product by 365 days. If the provider is regulated under the Alternative Conservation Program in the management plan in effect at the time of application, the provider's groundwater allowance depends on whether the provider was in existence on January 1, 1990. If the provider was in existence on that date, its groundwater allowance is the largest volume of groundwater withdrawn by the provider within the AMA in any one calendar year from 1980 through 1989. If the provider was not in existence on January 1, 1990, its groundwater allowance is calculated by multiplying its service area population for the calendar year by 62.5 GPCD, and then multiplying the product by 365 days. In addition to these differences in calculating a provider's groundwater allowance under the current rule and the proposed new rule, the current rule does not contain an allowance for incidental recharge.

Extinguishment Credits

Under proposed rule R12-15-725(B), extinguishment credits in the Pinal AMA will be calculated in a manner similar to the manner in which they are calculated in the Tucson, Phoenix, and Prescott AMAs. For the extinguishment of a type 2 non-irrigation GFR, the credits will be calculated by multiplying the number of acre-feet on the certificate by an allocation factor determined in the rule. For the extinguishment of all or a portion of an irrigation GFR or all or a portion of a type 1 non-irrigation GFR, the credits will be calculated by multiplying 1.5 AF by the number of irrigation acres associated with the extinguished irrigation GFR or the number of acres to which the extinguished type 1 GFR is appurtenant, and then multiplying the product by an allocation factor determined in the rule. If an extinguished irrigation GFR has a debit balance in its flex account, the amount of the debit will be subtracted from the amount of the extinguishment credits.

The rule contains a table with an allocation factor for each year beginning with 2007. The rule provides that in calculating the extinguishment credits for an extinguished GFR, the Director shall use the allocation factor associated with the year in which the GFR is extinguished. Similar to the Tucson, Phoenix, and Prescott AMAs, the allocation factor decreases over time. The allocation factor will be zero after 2054. However, if before January 1, 2055, there is a moratorium on enrolling new member lands in the CAGRD pursuant to A.R.S. § 45-576.06(A), the allocation factor will be frozen until the moratorium is no longer in effect, at which time the allocation factor will again begin decreasing until it reaches zero.

This method of calculating extinguishment credits is similar to the method used under the current rule, with certain exceptions. Under the current rule, the volume allocated for extinguishment credits is an annual volume, rather than a lump sum. In addition, the volume allocated for extinguishment credits does not decrease over time, but remains the same regardless of when the GFR is extinguished.

- 6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**



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The following are documents relevant to this rulemaking that the Department reviewed, and that the Department proposes to rely on in its justification for the rulemaking:

- Document entitled “Arizona Department of Water Resources, Pinal Active Management Area, Assured Water Supply Rules Modification Concepts.” This document was approved by the Pinal AMA GUAC on February 23, 2006. The public may obtain a copy of the document by contacting the agency personnel identified in item number 4 above.
- Document entitled “Professional Review of the Pinal Active Management Area’s Groundwater Budget, Arizona Department of Water Resources,” dated December 2004, by Burgess & Niple. The public may obtain a copy of the document by contacting the agency personnel identified in item number 4 above.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this:**

Not applicable

**8. The preliminary summary of the economic, small business, and economic impact:**

An Identification of the Proposed Rule Making

The Department proposes to amend R12-15-722, “Consistency with Management Goal” and R12-15-723, “Extinguishment Credits.” The Department also proposes to repeal R12-15-725, “Pinal AMA – Calculation of Groundwater Allowance and Extinguishment Credits” and adopt a new R12-15-725 with the same title. The purposes of this rulemaking are to:

- *reduce the proportion of groundwater supplies* that can be used without replenishment to demonstrate an assured water supply for new subdivisions and designation applicants in the Pinal AMA (R12-15-725(A)(1) and (2));
- *reduce the number of years used to calculate the extinguishment credits generated* when a GFR is extinguished in the Pinal AMA (R12-15-725(B));
- *eliminate the “rollover” of unused groundwater allowances and, with certain exceptions, extinguishment credits* in the Pinal AMA (R12-15-722(C), (D), (E) and (F)); and
- make minor modifications of minimal or no economic impact to rule R12-15-704.

The proposed modifications affect the Pinal AMA. Over time, the Department expects the combined impacts of the proposed modifications to lead to a shift towards much greater reliance on renewable municipal water supplies. This shift is expected to facilitate the realization of large, long-term economic benefits associated with more certain growth and development that will outweigh small, short-term costs associated with enhanced groundwater conservation and increased use of renewable municipal water supplies.

After the effective date of this rulemaking, the extinguishment credits generated when GFRs are newly extinguished will be calculated as a lump sum rather than a continuous annual volume, and the amount of the credits allocated for extinguished GFRs will decrease over time to zero after 2054. Except for existing extinguishment credits pledged to a designation as of the effective date of the rules, there will no longer be a rollover provision for unused extinguishment credits. The groundwater allowance for certificates will also be a lump sum, rather than an annual volume. The groundwater allowance for designations will be an annual volume, but will be capped based on the designated provider’s service area population as of the date this rulemaking becomes effective and the number of committed lots that the provider begins serving by January 1, 2010. There will be no rollover provision for the groundwater allowance.

The proposed rule modifications are expected to contribute to the realization of large net long-term economic benefits. The Department expects that the new rules will result in increased costs to some persons over a short-to-medium term, but will result in increased benefits and reduced costs to agencies, political subdivisions, and businesses over the longer term. The Department has designed the rule provisions to minimize the expected short-term costs and has provided a “laundry list” of cost-mitigation measures and options.

The proposed rule modifications will affect groundwater allowances only for those subdivisions approved after the date the modifications take effect and will not apply to certificates issued for subdivisions under the existing AWS Rules. Existing certificates retain their existing groundwater allowances and will do so when assigned or reissued. This rulemaking does not require designated providers to re-apply for a designation or to apply for a modification of the designation.

The Department and the Pinal AMA GUAC further expect the reductions in allowable groundwater use to help ensure a long-term, reliable supply of water for municipal uses, to encourage subdivisions to be developed on lands with irrigation GFRs and to assure the preservation of future water supplies for non-irrigation uses.

A Brief Summary of the Information Included in the Economic, Consumer, and Small Business Impact Statement

Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed AWS rule modifications for the Pinal AMA include agencies such as the Department, the Arizona State Land Department (ASLD), and the CAGR<sup>3</sup>; political subdivisions including counties, cities, and towns that seek economic development or provide

municipal water; investors and businesses large and small that develop or seek to develop subdivisions or provide municipal water; agencies, businesses, and political subdivisions that provide municipal water by pumping (lifting) groundwater; owners of GFRs, both public (the State of Arizona, City of Mesa) and private (farmers, irrigation districts and real estate investors); and residents within the Pinal AMA. Consumers purchasing new houses after the effective date of the new rules are likely to experience higher property taxes or pay increased water costs. In some cases, the same group of persons may experience shorter-term costs but longer-term benefits. All residents within the AMA will benefit from the use of more renewable water supplies within the AMA and the reduction in groundwater mining.

*Persons Directly Benefiting From The Proposed Rule Making*

- The Department
- The CAGRD
- Large and small real estate businesses developing new subdivisions, including builders, real estate brokerages, and suppliers of associated services such as building materials
- Homeowners and other residents within the AMA
- Owners of irrigation GFRs
- Persons who pump groundwater

*Persons Directly Bearing The Costs Of The Proposed Rule Making*

- Owners of new homes in the AMA
- Persons who develop and build new subdivisions
- Land-owners who wish to subdivide without appurtenant GFRs
- Municipal water users
- Designated water providers

*Cost – Benefit Analysis*

As of March 2005, approximately 300,000 lots were zoned but not yet platted for subdivision development. Current municipal water demand of about 60,000 acre-feet per year plus the new demand from these 300,000 lots at build out would exceed renewable groundwater supplies by approximately 100,000 acre-feet of groundwater per year without the proposed rule modifications.

The Department and Pinal GUAC view this level of unreplenished demand – essentially mined groundwater – as unseasonable and inconsistent with the AMA's management goal of preserving future water supplies for non-irrigation uses. Further, the GUAC found that this level of groundwater mining would begin to exhaust the physically available groundwater supplies in the not too distant future.

These considerations create the basic premise of this cost-benefit analysis. Costs and benefits are associated with the Pinal AMA AWS rules over both shorter- and longer-terms, whether or not the current rules are modified. Without the proposed rule modifications, most new AMA subdivisions are not likely to enroll in the CAGRD or pay enrollment, activation, and assessment fees, saving these short-term costs. But such relatively small short-term cost savings lead to the real possibility of enormous longer-term costs if the Department must deny applications, thereby precluding real estate development, because groundwater supplies are not physically available. Adoption of the proposed rules will cause persons to experience relatively small short-term costs. But the whole Arizona economy experiences benefits that greatly outweigh those costs as sustainable development predicated on a secure water supply is assured longer-term.

*Probable Benefits and Costs to Agencies*

- The Department will better serve the people of Arizona by supporting the Pinal AMA's water management goal of preserving future water supplies for non-irrigation uses.
- The ASLD will benefit as the value of its approximately 24,000 acres of Pinal AMA lands that have appurtenant irrigation GFRs increases. But, as with any AMA landowner, costs to develop the approximately 316,000 acres of state-owned AMA land without appurtenant GFRs may increase, perhaps prohibitively, particularly because these lands are likely to develop later than lands privately held. This situation is not; however, a product of the proposed rule modifications; it is normal in all AMAs.

3. The CAGRD is a division of the Central Arizona Water Conservation District, a tax-levying public improvement district of the state and a municipal corporation. In this EIS, the CAGRD is treated as if it were an Agency.

*Probable Benefits and Costs to Political Subdivisions*

- The CAGRD will collect fees and assessments from most housing units within new subdivisions for which certificates are issued and from most designated providers. In a worst-case scenario, additional fees during the last several years might have varied between \$1.14 million and \$0.62 million per year. Annual new assessments might have varied between \$0.97 and \$0.53 million. Renewable surface supplies are likely to become more costly and harder to locate, exposing the CAGRD to rising supply acquisition costs. CAGRD's administration costs are also likely to rise as applications, enrollments, and water deliveries increase.
- Any county, city, or town seeking sustained longer-term development will benefit from greater certainty that development can continue in an orderly manner over the long-term, assuring growth in revenue sources (sales and property taxes, development fees) and avoiding the dire consequences of a public perception that the area is "running out" of water.
- Political subdivisions will experience cost increases associated with sustained long-term growth, e.g., transportation infrastructure, schools and public safety.
- Municipal water providers that pump groundwater are likely to experience reduced pump lift, or at least less lift than under present rules. This associates directly with lower power costs and less operation, maintenance and repair ("O, M & R") costs on wells. Agricultural groundwater users have experienced large cost savings from this effect since CAP water became widely available in the AMA.

*Probable Benefits and Costs to Business, Including Small Business*

- Businesses, including small businesses, that directly develop or are directly linked to the development of housing subdivisions will benefit over a longer term from greater certainty that development can proceed in a more orderly manner and will avoid the dire consequences that will occur if development stops due to a real or perceived lack of physically available water.
- Owners of approximately 1,830 active irrigation GFRs encompassing approximately 272,000 active irrigation acres will benefit over both shorter and longer terms as extinguishment credits become increasingly valuable. The value of acres with appurtenant irrigation GFRs will increase.
- Owners of several hundred thousand undeveloped acres without appurtenant irrigation GFRs – e.g., "raw desert" – may see the value of these lands diminish longer term, if these lands become more costly to develop. The potential for subdivision development may diminish. Again, such an eventuality is not a product of the proposed rule modifications, and in fact, the proposed rules are likely to delay this eventuality, if it occurs at all.
- In 2005, there were approximately 4,400 wells in the Pinal AMA. Groundwater pumpers, including exempt well owners, municipal providers, irrigation districts, farmers, and investors in lands with appurtenant irrigation GFRs are likely to experience less pump lift than under present rules, resulting in lower power costs and less O, M & R on wells.
- Greater reliance on renewable supplies by designated providers over a longer term introduces certainty that service will proceed without disruption and eliminates the dire consequences associated with service outages that will occur with physical groundwater depletion. Over a shorter term, new and up-front CAGRD fees of \$85 per housing unit served will apply. CAGRD fees and assessments will associate with future designated provider service area expansion, and will increase supply acquisition costs.
- The existing rules contain the following provision designed to reduce the administrative and other cost burdens for small businesses: owners of dry lot subdivisions of 20 lots or fewer are exempt from the consistency with goal requirement for a certificate. This provision is retained in the rule modifications. R12-15-722(H).

*Probable Benefits and Costs to Households*

It is housing consumers – homeowners, lessees, and renters – who ultimately will pay incremental water costs associated with greatly increased use of renewable municipal water supplies, in the form of higher property taxes or higher water bills. But these same households will avoid potentially severe property value losses, as supply certainty and reduced groundwater depletion sustain property values long-term. Households will also benefit from the reduction in groundwater depletion, as the health and safety concerns that would result from aquifer depletion will be avoided.

Some housing consumers may choose to limit short-term incremental cost impacts expected by the Department by adopting municipal water conservation measures, or otherwise limiting their water use.

At 2006-07 CAGRD rates, the incremental cost per housing unit for supplies secured from the CAGRD increases by \$6.62 per housing unit per month with 90% replenishment, or \$7.35 with 100% replenishment. In other words, households already pay for water under the existing rules. The incremental cost under the proposed new rules is the difference between current water costs – usually the costs to pump groundwater – and the 'worst case' cost increases of about \$79.38 per housing unit per year at 2006-07 rates. As an example, Arizona Water Company, a large Pinal AMA water provider, currently charges Casa Grande homeowners approximately \$500 per acre-foot, equivalent to about \$189 per household per year. Using this example, these charges would increase by \$79.38, to about \$268 per household per year.

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Over a longer-term, the total annual incremental cost to 300,000 new subdivision housing units at build-out, all securing 90% of their supplies from the CAGR under a worst-case scenario, is \$23.81 million per year, or \$26.46 million with 100% renewable supplies, all at 2006 rates.

The total magnitude of 300,000 zoned but not platted housing units each paying CAGR enrollment and activation fees totaling \$85 at 2006 rates is also significant. At these rates at full build-out, the CAGR might collect an additional total of \$25.5 million in a worst-case scenario.

*Employment*

The Department does not anticipate a measurable impact on employment as a result of an increase in the wholesale price of water of the magnitude being proposed (e.g., an additional \$210 per acre-foot, or about \$7.35 per housing unit per month after the year 2024). This conclusion is supported by the observed course of development in the Phoenix and Tucson AMAs and the employment it supports. There, it would be difficult to argue that municipal water costs and long-standing AWS rules that are more restrictive than the proposed Pinal modifications have had any measurable impact on economic growth.

*State Revenues*

Excise, income, property, and sales taxes are expected remain stable to increasing longer-term as growth increases at a sustainable pace in the Pinal AMA. No new fees or charges are proposed. The Department does not presently anticipate a need to increase staff as a consequence of adopting the proposed rules.

*Alternative Methods of Achieving the Proposed Rulemaking*

The Department and the Pinal AMA GUAC engaged in a public dialogue extending over several years with the regulated community while drafting the proposed Pinal AMA rule modifications. The Department held four public meetings in 2006 to discuss written drafts of the proposed rule modifications and issues raised by stakeholders. Throughout this process, the Department invited stakeholder suggestions and incorporated changes to the draft rules in response to stakeholder concerns. The Department, as well as the Pinal AMA GUAC, considered many alternatives, some less intrusive or costly, some more. The present proposed rules emerged from this public participation process in preference to other alternatives.

**9. The name and address of the agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Michael S. Hanrahan  
Address: Arizona Department of Water Resource  
3550 N. Central Ave.  
Phoenix, AZ 85012  
Telephone: (602) 771-8601  
Fax: (602) 771- 8689  
E-mail: mshanrahan@azwater.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or receipt of the rule, or if no proceeding is scheduled, where, when, and how persons may request a oral proceeding on the proposed rule:**

A public hearing on the proposed rulemaking will be held on January 17, 2007 at 10:00 a.m., at the Central Arizona College, Signal Peak Campus, 8470 N. Overfield Rd., Room M101, Coolidge, AZ 85228.

Written comments will be accepted until January 17, 2007 at 5:00 p.m. Written comments should be addressed to:

Name: Kathleen Donoghue, Docket Supervisor  
Address: Arizona Department of Water Resources  
3550 N. Central Ave.  
Phoenix, AZ 85012  
Telephone: (602) 771-8472  
Fax: (602) 771-8683  
E-mail: kadonoghue@azwater.gov

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Section

R12-15-704. Certificate of Assured Water Supply

R12-15-722. Consistency with Management Goal

R12-15-723. Extinguishment Credits

R12-15-725. ~~Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits~~ Pinal AMA - Groundwater Allowance and Extinguishment Credits Calculation

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

**R12-15-704. Certificate of Assured Water Supply**

- A. An application for a certificate shall be filed by the current owner of the land that is the subject of the application. Potential purchasers and affiliates may also be included as applicants.
- B. An applicant for a certificate shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and provide the following:
  1. One of the following forms of proof of ownership for each applicant to be listed on the certificate:
    - a. For an applicant that is the current owner, one of the following:
      - i. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed, demonstrating that the applicant is the owner of the land that is the subject of the application; or
      - ii. Evidence that the CAGRDR has reviewed and approved evidence that the applicant is the owner of the land that is the subject of the application;
    - b. For an applicant that is a potential purchaser, evidence of a purchase agreement; or
    - c. For an applicant that is an affiliate of another applicant, a certification by the other applicant of the affiliate status;
  2. A plat of the subdivision;
  3. An estimate of the 100-year water demand for the subdivision;
  4. A list of all proposed sources of water that will be used by the subdivision;
  5. Evidence that the criteria in subsections (F) or (G) of this Section are met; and
  6. Any other information that the Director reasonably determines is necessary to decide whether an assured water supply exists for the subdivision.
- C. Each applicant shall sign the application for a certificate. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.
- D. The Director shall give public notice of an application for a certificate as provided in A.R.S. § 45-578.
- E. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
  1. The estimated water demand of the subdivision;
  2. The amount of the groundwater allowance for the subdivision, as provided in R12-15-724 through R12-15-727; and
  3. Whether the applicant has demonstrated all of the requirements in subsection (F) or subsection (G) of this Section.
- F. Except as provided in subsection (G) of this Section, the Director shall issue a certificate if the applicant demonstrates all of the following:
  1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
  2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
  3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
  4. The sources of water are of adequate quality, according to the criteria in R12-15-719;
  5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision, according to the criteria in R12-15-720;
  6. The proposed use of groundwater withdrawn within an AMA is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
  7. The proposed use of groundwater withdrawn within an AMA is consistent with the achievement of the management

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- goal, according to the criteria in R12-15-722.
- G.** If the Director previously issued a certificate for the subdivision, the Director shall issue a new certificate to the applicant if the applicant demonstrates that all of the requirements in subsection (F) are met or that all of the following apply:
1. Any changes to the plat for which the previous certificate was issued are not material, according to the criteria in R12-15-708;
  2. If groundwater is a proposed source of supply for the subdivision, the proposed groundwater withdrawals satisfied the physical availability requirements in effect at the time the complete and correct application for the previous certificate was submitted;
  3. Any proposed sources of water, other than groundwater, are physically available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-716;
  4. Any proposed sources of water other than groundwater are continuously available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-717;
  5. The proposed uses of groundwater withdrawn within an AMA were consistent with the achievement of the management goal according to the criteria in effect at the time the complete and correct application for the previous certificate was submitted; and
  6. The applicant demonstrates that the requirements in subsections (F)(3) through (F)(6) of this Section are met.
- H.** Before issuing a certificate, the Director shall classify the certificate for the purposes of R12-15-705 and R12-15-706 as follows:
1. Type A certificate. The Director shall classify the certificate as a Type A certificate if the applicant meets the criteria in R12-15-720(A)(1) and all of the subdivision's estimated water demand will be met with one or more of the following:
    - a. Groundwater served by a proposed municipal provider pursuant to an existing service area right;
    - b. Groundwater served by a proposed municipal provider pursuant to a pending service area right, if the proposed municipal provider currently holds or will hold the well permit;
    - c. CAP water served by a municipal provider pursuant to the proposed municipal provider's non-declining, long-term municipal and industrial subcontract;
    - d. Surface water served by a proposed municipal provider pursuant to the proposed municipal provider's surface water right or claim;
    - e. Effluent owned and served by a proposed municipal provider; or
    - f. A Type 1 grandfathered right appurtenant to the land on which the groundwater will be used and held by a proposed municipal provider.
  2. Type B certificate. The Director shall classify all certificates that do not meet the requirements of subsection (H)(1) of this Section as Type B certificates.
- I.** The Director shall review an application for a certificate pursuant to the licensing time-frame provisions in R12-15-401.
- J.** An owner of six or more lots is not required to obtain a certificate if all of the following apply:
1. The lots comprise a subset of a subdivision for which:
    - a. A plat was recorded before 1980; or
    - b. A certificate was issued before February 7, 1995;
  2. No changes were made to the plat since February 7, 1995; and
  3. Water service is currently available to each lot.
- K.** A new owner of all or a portion of a subdivision for which a plat has been recorded is not required to obtain a certificate if all of the following apply:
1. The Director previously issued a Type A certificate for the subdivision pursuant to subsection (H)(1) of this Section or R12-15-707;
  2. Water service is currently available to each lot; and
  3. There are no material changes to the plat for which the certificate was issued, according to the criteria in R12-15-708.
- L.** ~~An owner of six or more lots in the Pinal AMA is not required to obtain a certificate if all of the following apply:~~
- ~~1. A plat for the subdivision was recorded before the effective date of R12-15-725;~~
  - ~~2. There have been no material changes to the plat according to the criteria in R12-15-708, since the effective date of R12-15-725;~~
  - ~~3. The proposed municipal provider was designated as having an assured water supply when the plat was recorded, but is no longer designated as having an assured water supply; and~~
  - ~~4. Water service is currently available to each lot.~~
- M.** ~~A person may request a letter stating that the owner is not required to obtain a certificate pursuant to subsection (J), or~~ subsection (K), ~~or (L) of this Section by submitting an application on a form prescribed by the Director and attaching evidence that the criteria of-subsection (J), or-subsection (K), or (L) are met. Upon receiving an application pursuant to this subsection, the Director shall:~~
1. Review the application pursuant to the licensing time-frame provisions in R12-15-401.
  2. Determine whether the criteria of subsection (J), ~~or-subsection (K), or (L) of this Section are met.~~

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3. If the Director determines that the criteria of subsection (J) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner is not required to obtain a certificate.
4. If the Director determines that the criteria of subsection (K) or (L) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner and any future owners are not required to obtain a certificate.

**R12-15-722. Consistency with Management Goal**

- A. For the Phoenix, ~~Pinal~~, Prescott, or Tucson AMAs, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA in which the proposed use is located for at least 100 years by adding the following:
  1. The amount of the groundwater allowance, according to R12-15-724(A), ~~R12-15-725(A)~~, R12-15-726(A), or R12-15-727(A).
  2. The amount of any extinguishment credits pledged to the certificate or designation, according to R12-15-724(B), ~~R12-15-725(B)~~, R12-15-726(B), or R12-15-727(B).
  3. Any groundwater ~~use~~ that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- B. ~~If the proposed use is located in the Phoenix, Prescott, or Tucson AMA, the volume calculated in subsection (A) is the volume of groundwater that may be used, consistent with the management goal, for at least 100 years. The Director shall determine that a proposed groundwater use in the Phoenix, Prescott, or Tucson AMA is consistent with the management goal of the AMA if the volume calculated in subsection (A) of this Section is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.~~
- C. ~~If the proposed use is located in the Pinal AMA, the volume calculated in subsection (A) is the volume of groundwater that may be used, consistent with the management goal, on an annual basis. If in any calendar year less groundwater is used than the volume calculated in subsection (A), the Director shall add the difference to the volume calculated in subsection (A) for the following calendar year. For a certificate in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA for at least 100 years by adding the following:~~
  1. The amount of the groundwater allowance, according to R12-15-725(A)(1).
  2. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after the effective date of R12-15-725, according to R12-15-725(B).
  3. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished before the effective date of R12-15-725. The Director shall calculate the amount of the extinguishment credits by multiplying the annual amount of the credits by 100.
  4. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- D. For the Phoenix, Pinal, Prescott, or Tucson AMAs, the Director shall determine that a proposed groundwater use is consistent with the management goal of the AMA if the volume calculated in subsection (A) of this Section is equal to or greater than:
  1. ~~In the Phoenix, Prescott, or Tucson AMA, the portion of an applicant's estimated water demand to be met with groundwater.~~
  2. ~~In the Pinal AMA, the portion of an applicant's annual estimated water demand to be met with groundwater. For a certificate in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the AMA if the volume calculated in subsection (C) of this Section is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.~~
- E. For a designation in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the Pinal AMA on an annual basis by adding the following:
  1. The amount of the groundwater allowance, according to R12-15-725(A)(2). If any of the groundwater allowance is not used during a year, the unused groundwater allowance shall not be added to the volume calculated under this subsection for the following year.
  2. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after the effective date of R12-15-725, according to R12-15-725(B), divided by 100. Extinguishment credits for a grandfathered right that was extinguished on or after the effective date of R12-15-725 may be used in any year.
  3. The annual amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished before the effective date of R12-15-725. The following shall apply if any of the extinguishment credits are not used during a calendar year:
    - a. If the extinguishment credits were pledged to the designation before the effective date of R12-15-725, any extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.
    - b. If the extinguishment credits are pledged to the designation on or after the effective date of R12-15-725, any of

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the extinguishment credits not used during a calendar year shall not be added to the volume calculated under this subsection for the following calendar year, except that if the extinguishment credits were originally pledged to a certificate before the effective date of R12-15-725 and are used to support the municipal provider's designation pursuant to R12-15-723(G)(2), any of the extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.

4. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.

**E.** For a designation in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the Pinal AMA if the annual volume calculated in subsection (E) of this Section is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater.

~~F.~~**G.** Upon application, the following volumes of groundwater used by an applicant are considered consistent with the management goal:

1. If the Director determines that a surface water supply is physically available under R12-15-716 and the volume of the supply actually available during a calendar year is equal to or less than the drought volume for the supply, the volume of groundwater, other than the groundwater that is accounted for under subsection (A), (C), or (E) of this Section, withdrawn within the AMA that, when combined with the available surface water supply, is equal to or less than the drought volume.
2. Any volume of groundwater withdrawn within a portion of an AMA that is exempt from conservation requirements under A.R.S. Title 45 due to waterlogging. The Director shall review the application of this exclusion on a periodic basis, not to exceed 15 years.
3. Remedial groundwater that is consistent with the management goal according to the requirements of R12-15-729.

~~F.~~**H.** An applicant for a certificate of assured water supply for a dry lot subdivision of 20 lots or fewer is exempt from the requirements of this Section.

**R12-15-723. Extinguishment Credits**

**A.** Except as provided in subsection (D) of this Section, the owner of a grandfathered right may extinguish the right in exchange for extinguishment credits by submitting the following:

1. A notarized statement of extinguishment of a grandfathered right on a form provided by the Director;
2. The grandfathered right number;
3. If the right being extinguished is a type 1 non-irrigation grandfathered right or an irrigation grandfathered right, evidence of ownership of the land to which the grandfathered right is appurtenant;
4. If the grandfathered right is located in the Prescott ~~Active Management Area~~ AMA, evidence that all of the following conditions are met:
  - a. The land to which the right is appurtenant has not been and will not be subdivided pursuant to a preliminary plat or a final plat that was approved by a city, town, or county before August 21, 1998; and
  - b. The land to which the right is appurtenant is not and will not be the location of a subdivision for which a complete and correct application for a certificate of assured water supply was submitted to the Director before August 21, 1998;
5. If the right being extinguished is an irrigation grandfathered right, evidence that the development of the land to which the right is appurtenant is not completed; ~~and~~
6. Any additional information the Director may reasonably require to process the extinguishment.

**B.** The Director shall calculate the amount of extinguishment credits pursuant to R12-15-724(B), R12-15-725(B), R12-15-726(B), or R12-15-727(B). The Director shall notify the owner of the amount of extinguishment credits in writing. If the owner is extinguishing only a portion of the right, the Director shall issue a new certificate of grandfathered right for the remainder of the right.

**C.** A type 1 non-irrigation grandfathered right or an irrigation grandfathered right may be extinguished in whole or in part. A type 2 non-irrigation grandfathered right may be extinguished only in whole.

**D.** The following rights may not be extinguished in exchange for extinguishment credits:

1. An irrigation grandfathered right that is appurtenant to land that has been physically developed for a non-irrigation use. The Director shall not consider the land to be physically developed until the development is completed.
2. A type 1 non-irrigation grandfathered right, if the Director determines that the holder is likely to continue to receive groundwater from an undesignated municipal provider for the same use pursuant to the provider's service area right or pursuant to a groundwater withdrawal permit.
3. A type 2 non-irrigation grandfathered right that was issued based on the withdrawal of groundwater for mineral extraction or processing or for the generation of electrical energy.
4. On or after January 1, 2025, any grandfathered right that is in the Phoenix, Prescott, or Tucson AMAs.
5. Any grandfathered right in the Pinal AMA beginning in the first calendar year in which the allocation factor for the extinguishment of a grandfathered right is zero, pursuant to R12-15-725(B)(3) or (4).

~~5-6.~~ A type 1 non-irrigation grandfathered right that was requested to be included by a city or town in the Tucson AMA in



the determination made under A.R.S. § 45-463(F).

- E. The owner of extinguishment credits may pledge the credits to a certificate or to a designation before the certificate or designation is issued by submitting with the application for the certificate or designation a notice of intent to pledge extinguishment credits on a form provided by the Director. The extinguishment credits shall be pledged to the certificate or designation upon issuance of the certificate or designation.
- F. The owner of extinguishment credits may pledge the credits to a certificate or to a designation after the certificate or designation is issued by submitting a notice of intent to pledge extinguishment credits on a form provided by the Director. The Director shall notify the owner of the extinguishment credits and the certificate holder or designated provider that the credits have been pledged to the certificate or designation.
- G. Extinguishment credits that have not been pledged to a certificate or designation may be conveyed within the same ~~active management area~~ AMA. Extinguishment credits pledged to a certificate or designation shall not be conveyed to another person, except that:
  - 1. If extinguishment credits are pledged to a certificate that is later assigned or reissued, any unused credits are transferred, by operation of this subsection, to the assigned or reissued certificate. If the certificate is partially assigned or reissued, a pro rata share of the unused extinguishment credits is transferred to each assigned or reissued certificate according to the estimated water demand.
  - 2. If extinguishment credits are pledged to a certificate for a subdivision that is later served by a designated provider or a municipal provider that is applying for a designation, any unused extinguishment credits may be used to support the municipal provider's designation as long as the municipal provider serves the subdivision and remains designated. If the municipal provider is no longer serving the subdivision or if the municipal provider loses its designated status, any unused extinguishment credits shall revert, by operation of this subsection, to the certificate to which they were originally pledged.
- H. The Director shall review a statement of extinguishment of a grandfathered right and a notice of intent to pledge extinguishment credits pursuant to the licensing time-frame provisions in R12-15-401.

**R12-15-725. ~~Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits~~ Pinal AMA - Groundwater Allowance and Extinguishment Credits Calculation**

- ~~A. The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:~~
  - 1. ~~If the application is for a certificate and the proposed municipal provider is a small municipal provider or a municipal provider that is required to comply with either a total gallons per capita per day requirement or a non-per capita program requirement established in the management plan in effect on the date of application, multiply the proposed subdivision's build-out population by 125 gallons per capita per day, and multiply the product by 365 days.~~
  - 2. ~~If the application is for a certificate and the proposed municipal provider is an existing municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application, the groundwater allowance is zero acre-feet.~~
  - 3. ~~If the application is for a certificate and the proposed municipal provider is a new municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application, multiply the proposed subdivision's build-out population by 62.5 gallons per capita per day and multiply the product by 365 days.~~
  - 4. ~~If the application is for a designation and the applicant is a small municipal provider or a municipal provider that is required to comply with either a total gallons per capita per day requirement or a non-per capita program requirement established in the management plan in effect on the date of application, multiply the provider's service area's population for the calendar year by 125 gallons per capita per day and multiply the product by 365 days.~~
  - 5. ~~If the application is for a designation and the applicant is an existing municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application, the groundwater allowance is the largest volume of groundwater withdrawn by the applicant within the AMA in any one calendar year from calendar year 1980 through calendar year 1989.~~
  - 6. ~~If the application is for a designation and the applicant is a new municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application, multiply the provider's service area's population for the calendar year by 62.5 gallons per capita per day and multiply the product by 365 days.~~
- ~~B. The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:~~
  - 1. ~~For the extinguishment of a type 2 non-irrigation grandfathered right, an annual amount equal to the number of acre-feet indicated on the certificate.~~
  - 2. ~~For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, the amount calculated annually by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, except that:~~

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- a. ~~If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and~~
- b. ~~If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.~~

**A. The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:**

- 1. If the application is for a certificate, multiply the applicable allocation factor set forth in the table below for the management period in effect on the date of application by the annual estimated water demand for the proposed subdivision.

<u>MANAGEMENT PERIOD/ DATE OF APPLICATION</u>	<u>ALLOCATION FACTOR</u>
<u>Third</u>	<u>10</u>
<u>Fourth</u>	<u>10</u>
<u>Fifth</u>	<u>5</u>
<u>After Fifth</u>	<u>0</u>

- 2. If the application is for a designation:
  - a. If the applicant was designated as having an assured water supply as of the effective date of this Section:
    - i. Multiply the applicant's service area population as of the effective date of this Section by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology set forth in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
    - ii. Convert the number of gallons determined in subsection (A)(2)(a)(i) into acre-feet by dividing the number by 325,851 gallons.
    - iii. Determine the number of residential lots within the applicant's service area that were recorded as of the effective date of this Section but not served water as of that date, and to which the applicant commenced water service by January 1, 2010.
    - iv. Multiply the number of lots determined in subsection (A)(2)(a)(iii) of this Section by 0.35 acre-foot per lot.
    - v. Add the volume from subsection (A)(2)(a)(ii) of this Section and the volume from subsection (A)(2)(a)(iv) of this Section.
  - b. If the applicant provided water to its customers before the effective date of this Section but was not designated as having an assured water supply as of that date, and a complete and correct application for designation is filed prior to January 1, 2012, multiply the applicant's service area population as of the effective date of this Section by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology set forth in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
  - c. If the applicant provided water to its customers prior to the effective date of this Section but was not designated as having an assured water supply as of that date, and a complete and correct application for designation is filed on or after January 1, 2012, the applicant's groundwater allowance is zero acre-feet.
  - d. If the applicant commenced providing water to its customers on or after the effective date of this Section, the applicant's groundwater allowance is zero acre-feet.
- 3. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Pinal AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1) (2006). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different from 4%.

**B. The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:**

- 1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the applicable allocation factor as determined under subsection (B)(3) or (B)(4) of this Section.

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2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, an amount calculated by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by the applicable allocation factor as determined under subsection (B)(3) or (B)(4) of this Section, except that:
  - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
  - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.
3. Except as provided in subsection (B)(4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (B)(1) or (B)(2) of this Section, the Director shall use the allocation factor associated with the year in which the grandfathered right is extinguished, as shown in the table below.

<u>Year</u>	<u>Allocation Factor</u>
<u>2007</u>	<u>100</u>
<u>2008</u>	<u>100</u>
<u>2009</u>	<u>100</u>
<u>2010</u>	<u>90</u>
<u>2011</u>	<u>88</u>
<u>2012</u>	<u>86</u>
<u>2013</u>	<u>84</u>
<u>2014</u>	<u>82</u>
<u>2015</u>	<u>80</u>
<u>2016</u>	<u>78</u>
<u>2017</u>	<u>76</u>
<u>2018</u>	<u>74</u>
<u>2019</u>	<u>72</u>
<u>2020</u>	<u>70</u>
<u>2021</u>	<u>68</u>
<u>2022</u>	<u>66</u>
<u>2023</u>	<u>64</u>
<u>2024</u>	<u>62</u>
<u>2025</u>	<u>60</u>
<u>2026</u>	<u>58</u>
<u>2027</u>	<u>56</u>
<u>2028</u>	<u>54</u>
<u>2029</u>	<u>52</u>
<u>2030</u>	<u>50</u>
<u>2031</u>	<u>48</u>
<u>2032</u>	<u>46</u>
<u>2033</u>	<u>44</u>
<u>2034</u>	<u>42</u>
<u>2035</u>	<u>40</u>
<u>2036</u>	<u>38</u>
<u>2037</u>	<u>36</u>
<u>2038</u>	<u>34</u>

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<u>2039</u>	<u>32</u>
<u>2040</u>	<u>30</u>
<u>2041</u>	<u>28</u>
<u>2042</u>	<u>26</u>
<u>2043</u>	<u>24</u>
<u>2044</u>	<u>22</u>
<u>2045</u>	<u>20</u>
<u>2046</u>	<u>18</u>
<u>2047</u>	<u>16</u>
<u>2048</u>	<u>14</u>
<u>2049</u>	<u>12</u>
<u>2050</u>	<u>10</u>
<u>2051</u>	<u>8</u>
<u>2052</u>	<u>6</u>
<u>2053</u>	<u>4</u>
<u>2054</u>	<u>2</u>
<u>After 2054</u>	<u>0</u>

4. If, prior to January 1, 2055, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (B)(1) or (B)(2) of this Section, the Director shall use an allocation factor determined as follows:
- a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (B)(3) of this Section.
  - b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (B)(3) of this Section. The Director shall determine the year as follows:
    - i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.
    - ii. Subtract the difference in subsection (B)(4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 13. PUBLIC SAFETY**

**CHAPTER 8. DEPARTMENT OF PUBLIC SAFETY  
LOCAL RETIREMENT BOARD**

[R06-459]

**PREAMBLE**

**1. Sections Affected**

R13-8-101  
R13-8-103  
R13-8-104  
R13-8-105  
R13-8-106  
R13-8-109  
R13-8-110  
R13-8-111  
R13-8-112  
R13-8-115

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
New Section

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2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 38-847(F)  
Implementing statute: A.R.S. §§ 12-2292, 38-431.03, 38-844, 38-844.02, 38-844.05, 38-844.10, 38-847
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 11 A.A.R. 1062, March 11, 2005  
Notice of Rulemaking Docket Opening: 12 A.A.R. 3905, October 20, 2006
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Beverly Fuller, Secretary to the Local Retirement Board  
Address: Department of Public Safety  
2101 W. Encanto Blvd.  
P.O. Box 6638  
Phoenix, AZ 85005-6638  
Telephone: (602) 223-2147  
Fax: (602) 223-2921  
E-mail: bfuller@azdps.gov
5. **An explanation of the rule, including the agency's reasons for initiating the rule.**  
The purpose of this rulemaking is to update the board's rules to ensure their consistency with relevant statutes that have been amended or adopted since the board's last rulemaking endeavor. The rules address administrative procedures of the board in implementing its statutory duties.
6. **A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
None
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
8. **The preliminary summary of the economic, small business, and consumer impact:**  
The economic, small business and consumer impact of these amended rules and new rule will be minimal because the rules simply update and clarify the procedures required by state law.
9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**  
Name: Beverly Fuller, Secretary to the Local Retirement Board  
Address: Department of Public Safety  
2101 W. Encanto Blvd.  
P.O. Box 6638  
Phoenix, AZ 85005-6638  
Telephone: (602) 223-2147  
Fax: (602) 223-2921  
E-mail: bfuller@azdps.gov
10. **The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**  
No oral proceedings are scheduled.  
Written or oral comments will be accepted by the board secretary between 8:00 a.m. and 3:00 p.m. Monday through Friday, excluding holidays, at the address listed in item #4.  
The public record in this rulemaking will close at 3:00 p.m. on January 19, 2007.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
None
12. **Incorporations by reference and their location in the rules:**  
None

**13. The full text of the rules follows:**

**TITLE 13. PUBLIC SAFETY**

**CHAPTER 8. DEPARTMENT OF PUBLIC SAFETYLOCAL RETIREMENT BOARD**

**ARTICLE 1. PROCEDURES**

Section

- R13-8-101. Definitions and Interpretation  
R13-8-103. New Memberships  
R13-8-104. Normal Retirement ~~and~~ Deferred Retirement, Deferred Retirement Option Plan (DROP) and Reverse DROP  
R13-8-105. Disability Retirement  
R13-8-106. Medical Examination of and Recovery by Member with Accidental or Ordinary Disability  
R13-8-109. Benefits Calculations  
R13-8-110. Termination of Benefits  
R13-8-111. ~~Substantial Gainful Employment of Member with Accidental or Ordinary Disability Pension Reduction by~~  
Income from Employment  
R13-8-112. Rehearing on Original Determination  
R13-8-115. Confidentiality of Medical Records and Data

**ARTICLE 1. PROCEDURES**

**R13-8-101. Definitions and Interpretation**

- A. "System" means the Public Safety Personnel Retirement System, created by the provisions of A.R.S. Title 38, Chapter 5, Article 4, (A.R.S. § 38-841 et seq.).  
B. "Local board" means the Department of Public Safety Local Retirement Board for the Public Safety Personnel Retirement System established pursuant to A.R.S. § 38-847.  
C. "Secretary" means the secretary of the local board.  
D. "DROP" means deferred retirement option plan.  
~~D-E.~~ Interpretation and application of the rules in this Chapter shall be consistent with the definitions set forth in A.R.S. § 38-842.

**R13-8-103. New Memberships**

- A. Within one month of hire, the secretary shall distribute membership forms to the newly employed commissioned officers.  
B. After receipt of completed membership forms, the secretary shall request each applicant's medical report from the medical advisor of the Department of Public Safety and review the medical reports. The secretary shall report to the local board when the medical advisor has indicated that any applicant has a condition which required a category II medical review for compliance with the Arizona Peace Officer Standards and Training Board medical requirements. report indicates a pre-existing physical or mental condition or prior injury.  
C. The local board at its regularly scheduled meetings shall review the applications for new membership for eligibility in the system and the medical reports of any applicants with a ~~medical waiver~~. pre-existing physical or mental condition or prior injury.  
D. If an applicant has a physical or mental condition or injury that existed or occurred prior to the date of membership in the system, but is otherwise eligible for membership, the local board shall approve membership, excluding accidental, catastrophic, or ordinary disability benefits relating to the ~~preexisting~~ pre-existing physical or mental condition or injury.  
E. If the local board denies membership or approves membership with an exclusion based on a ~~preexisting~~ pre-existing condition, the secretary shall so notify the applicant in writing.  
F. The local board may review on its own initiative and redetermine its prior decisions on membership and exclusions. The local board shall notify any member of any meeting at which the local board will review a prior decision affecting a member's membership.

**R13-8-104. Normal Retirement ~~and~~ Deferred Retirement, Deferred Retirement Option Plan (DROP) and Reverse DROP**

- A. When a member applies for normal retirement ~~or~~ deferred retirement, DROP or reverse DROP, the member shall be provided with the appropriate forms, information on the documentation required, and assistance in applying for retirement benefits.  
B. When all required forms and documentation have been fully completed and submitted to the secretary, the application for normal retirement ~~or~~ deferred retirement, DROP or reverse DROP shall be placed on the agenda for the next regularly scheduled meeting of the local board, provided the submission is completed ten calendar days prior to the meeting.

C. Upon a member's application, the member shall be permitted to address the local board.

**R13-8-105. Disability Retirement**

- A. When a member applies for ordinary, accidental, catastrophic, or temporary disability pension, the member shall be provided with the appropriate forms, information on the documentation required, and assistance in applying for a disability pension.
- B. When all required forms and documentation have been fully completed and submitted to the secretary, the secretary shall schedule the appointed Medical Board, notify the claimant of the date, time, and location of the Medical Board examination, and forward the application and all appropriate papers to the Medical Board.
- C. If the claimant is applying for an ordinary disability pension, the local board shall request the Medical Board to address specifically:
1. Whether the claimant
    - a. Has a physical condition which totally and permanently prevents the claimant from performing a reasonable range of duties within the member's department, or
    - b. Has a mental condition which totally and permanently prevents the claimant from engaging in any substantial gainful activity, and
  2. Whether the claimant's disability is the result of a physical or mental condition or injury that existed or occurred prior to the claimant's date of membership in the system.
- D. If the claimant is applying for an accidental disability pension, the local board shall request the Medical Board to address specifically:
1. Whether the claimant has a physical or mental condition which totally and permanently prevents the claimant from performing a reasonable range of duties within the member's job classification,
  2. Whether the disabling condition was incurred in the performance of the member's job duties, and
  3. Whether the claimant's disability is the result of a physical or mental condition or injury that existed or occurred prior to the claimant's date of membership in the system.
- E. If the claimant is applying for a temporary disability pension, the local board shall request the Medical Board to address specifically:
1. Whether the claimant has a physical or mental condition which totally and temporarily prevents the claimant from performing a reasonable range of duties within the member's department, and
  2. Whether the disabling condition was incurred in the performance of the member's job duties.
- F. If the claimant is applying for a catastrophic disability pension, the local board shall request the Medical Board to address specifically:
1. Whether the claimant has a physical condition which totally and permanently prevents the claimant from engaging in any gainful employment.
  2. Whether the disabling physical condition or injury was incurred in the performance of the claimant's employment duties.
  3. Whether the claimant's disability is the result of a physical condition or injury that existed or occurred prior to the claimant's date of membership in the system.
- ~~F.G.~~ Upon receipt of the Medical Board's evaluation, the secretary shall forward a copy of the evaluation to the claimant, and the application for disability retirement shall be placed on the agenda for the next regularly scheduled meeting of the local board, provided the evaluation is received ten calendar days prior to the meeting.
- ~~G.H.~~ Upon a member's application, the member shall be permitted to address the local board.

**R13-8-106. Medical Examination of and Recovery by Member with Accidental or Ordinary Disability**

- A. When the local board determines that a member qualifies for an ordinary or accidental disability retirement pension and the member will not reach normal retirement date within one year of the initial determination, the local board shall determine whether and when to request medical ~~examination~~ re-examination pursuant to A.R.S. § ~~38-844(D)~~ 38-844(E).
- B. If the local board requests the medical ~~examination~~ re-examination, the secretary shall so calendar the requested medical examination; process and direct the relevant medical documents; notify the pensioner of the date, time, and location of the medical examination; and forward appropriate documentation to the doctors or clinic performing the medical examination.
- C. The local board shall request the Medical Board performing the medical ~~examination~~ re-examination to address specifically whether the pensioner has sufficiently recovered to be able to engage in a reasonable range of duties within the member's ~~job classification~~ department.
- D. Upon receipt of the report of the medical ~~examination~~ re-examination, the secretary shall forward a copy to the pensioner and place the item on the agenda for the next regularly scheduled meeting of the local board, provided the report is received ten calendar days prior to the meeting.
- E. The pensioner shall be permitted to address the local board at any board meeting at which a determination on recovery may be made.

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- F. If the local board determines that the pensioner has recovered sufficiently to be able to engage in a reasonable range of duties within the member's ~~job classification, department,~~ the local board shall so notify the pensioner and the member's department. If the member's department makes an offer of employment to the member, and the member refuses an offer of employment, the local board shall terminate benefits.
- G. If the local board determines that the pensioner has not recovered, the local board shall determine whether and when to request another medical ~~examination~~ re-examination pursuant to A.R.S. § ~~38-844(D)~~; 38-844(E).
- H. Notwithstanding the provisions of subsections (A) and (G), the local board may request a medical ~~examination~~ re-examination pursuant to A.R.S. § ~~38-844(D)~~ 38-844(E) at any time prior to a disability pensioner's normal retirement date.

**R13-8-109. Benefits Calculations**

- A. The local board delegates to the secretary the calculation of DROP benefits, service retirement benefits, ~~including all service retirements and surviving spouse, guardian, and eligible child benefits for deceased members who were receiving service retirements, and the calculation of disability retirement benefits, and death benefits for including all disability retirements,~~ surviving spouse; of member and retired member, guardian, and eligible child, ~~benefits for deceased members who were receiving disability retirements, and surviving spouse, guardian, and eligible child benefits for non-retired, deceased members.~~
- ~~B. Upon request by a member, the secretary shall estimate the amount of the monthly pension at the time the member applies for retirement.~~
- ~~C. Subsequent to the issuance of a member's last paycheck, the secretary shall calculate the member's service retirement benefits or the disability retirement benefits.~~
- C. Subsequent to a member's last contribution to the System after approval of the member's participation in DROP, the secretary shall calculate the member's DROP benefit.
- D. The member, surviving spouse, guardian, or eligible child shall receive notification of the calculation of benefits by receiving benefits from the system or by certified mail.

**R13-8-110. Termination of Benefits**

- A. Upon the death of a retired member, the local board shall terminate the member's benefits effective the first day of the month following the death and shall entertain applications for survivor's benefits, if and when submitted.
- B. When an eligible child is no longer eligible, the local board shall terminate the child's pension and, where appropriate, any guardian or conservator's pension.

**R13-8-111. ~~Substantial Gainful Employment of Member with Accidental or Ordinary Disability Pension~~ Reduction by Income from Employment**

- ~~A. For purposes of applying A.R.S. § 38-844(E), "substantial gainful employment" shall mean work, business, or activity in which the member is engaged for compensation unless the work, business, or activity is principally in or in conjunction with a recognized program of education, instruction, or training which allows a member receiving disability payments to acquire skills and knowledge necessary to seek employment in a field not covered by the system.~~
- ~~B. For purposes of applying A.R.S. § 38-844(E), "earned income" shall include income or other compensation received for labor performed or services rendered by a member on disability. Such income and other compensation includes wages, salary, retainers, commissions, fees, and compensation for the member's labor or services which would otherwise be taxable as income, such as housing, automobile expenses, travel, and gifts. "Earned income" does not include income received by the member from savings accounts, stocks, bonds, proceeds from rental properties, promissory notes, and other forms of capital investments or from pensions, disability insurance, or social security.~~
- ~~C. A. No later than April 30 of each year, each member receiving ordinary disability payments during the period prior to normal retirement date shall provide a notarized statement to the local board which identifies all earned income from employment, including self-employment, received by the member in the previous calendar year and describes the work, business, or activities in employment and/or self-employment from which the member was engaged for compensation; received income. The statement shall also include the fair market value of all benefits received by the member during the previous calendar year as compensation for such work, business, or activity; employment or self employment. Copies of all income tax statements, 1099 forms, and W-2 forms reflecting the member's income for the previous calendar year shall be attached to the notarized statement.~~
- ~~D. B. Upon written request by a member, the local board may grant the member an additional 30 days to allow the member to provide the local board with the information required under subsection (C); (A).~~
- ~~E. C. If a member fails to report earned income as required by this rule, the local board shall suspend any further ordinary disability payments to the member until such time as the member reports such earned income for the previous year.~~
- D. Subsequent to the review of income reporting by the local board, the secretary shall return the copies of all income tax statements, 1099 forms, and W-2 forms to the member.

**R13-8-112. Rehearing on Original Determination**

- A. The local board shall conduct rehearings pursuant to A.R.S. § 38-847(H) as an adjudicative proceeding under A.R.S. Title



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41, Chapter 6, Article 6 (A.R.S. § 41-1061 et seq.).

- B.** If the fund manager applies for a rehearing, the claimant whose benefit determination may be affected shall be a party to the proceeding.
- C.** By 10 calendar days prior to the rehearing, the claimant or fund manager shall submit to the local board a list of witnesses whom the claimant or fund manager intends to call to testify at the hearing and of all exhibits which the claimant or fund manager intends to use at the hearing as well as a copy of all listed exhibits.
- D.** By 10 calendar days prior to the rehearing, the claimant or fund manager may submit to the local board a written statement setting forth the facts of the case and a brief addressing relevant issues.
- E.** If the claimant, fund manager, or local board desires subpoenas pursuant to A.R.S. § 41-1062(A)(4), said subpoenas shall be submitted at least ten calendar days prior to the rehearing to the secretary for issuance by the presiding hearing officer. Service of the subpoenas is the responsibility of the party requesting issuance of the subpoenas.
- F.** Applications for permission to take depositions pursuant to A.R.S. § 41-1062(A)(4) shall be submitted to the secretary for determination by the presiding hearing officer.
- G.** Unless the local board decides otherwise, the chairperson of the local board shall function as the presiding hearing officer. ~~The local board may appoint a hearing officer to preside over the rehearing and to make written findings of fact and conclusions of law and a written recommendation to the local board with respect to any issues presented at the rehearing.~~
- H.** The burden of proof for establishing a disability shall be with the claimant.

**R13-8-115. Confidentiality of Medical Records and Data**

- A.** Medical records and data of members held by the local board are confidential and are exempt from public copying and inspection requirements of A.R.S. § 39-121 et seq.
- B.** The local board shall discuss all medical records and specific medical data in executive session, including the taking of testimony that is specifically required to be maintained as confidential by state or federal law, unless the member signs a consent form to discuss the member's medical records and data in open meeting.
- C.** The member, member's legal counsel, and only individuals whose presence is reasonable necessary in order for the local board to carry out its executive session responsibilities may attend an executive session pursuant to A.R.S. § 38-431.03(A)(2) to discuss the member's medical records and specific medical data.